BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

The BUILDING ASSOCIATION OF CLARK COUNTY, the CLARK COUNTY ASSOCIATION OF REALTORS, the RESPONSIBLE GROWTH FORUM, and the GREATER VANCOUVER CHAMBER OF COMMERCE, et al,

Petitioners,

v.

CLARK COUNTY and STATE OF WASHINGTON, OFFICE OF FINANCIAL MANAGEMENT,

Respondents,

and,

GRAMOR OREGON, INC., JOHN SOMARAKIS, ROBERT FRASIER and GARY RADEMACHER, MICHAEL J. DEFREES, WHISPERING PINES LAND INVESTMENT AND DEVELOPMENT COMPANY, JOSEPH and VIRGINIA LEAR, DEBBIE MERA, JOSEPH and VIRGINIA LEAR, PETER J. STONE, DONNA L. STONE, MAKIM ENTERPRISES, JOHN, PAM, AND CHRISTINE PHILBROOK, THE CITY OF BATTLE GROUND, THE ROSEMARY PARKER LIVING TRUST, ROSEMARY PARKER, JAMES PARKER, HOLT HOMES, MICHAEL S. and TERRY K. BOWYER, The BUILDING ASSOCIATION OF CLARK COUNTY, CLARK COUNTY ASSOCIATION OF REALTORS, the RESPONSIBLE GROWTH FORUM, the GREATER VANCOUVER CHAMBER OF COMMERCE, DONALD and NANCY BLAIR, RICHARD and PAMELA MARION, ROGER and BONNIE GREGG, MARK and KATHRYN LEATHERS, RICHARD and BARBARA SALAS, SHARON Y. MILLER, JUDITH and BRUCE WOOD, JERRY MICHELE WINTERS, AND RENAISSANCE HOMES,

Intervenors.

Case No. 04-2-0038c

FINAL DECISION AND ORDER

SYNOPSIS OF DECISION

This case started as a consolidation of 14 petitions for review that challenged the adoption of the Clark County 20 Year Comprehensive Growth Management Plan 2003 – 2023

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

Revised (County's CP) and raised 43 issues. On September 7, 2004, the County adopted a new comprehensive plan (CP) which, at the same time, completed its update requirements. After an intense series of procedural motions, only two petitioners, the Clark County Natural Resources Council (CCNRC) and Futurewise, remained as petitioners. The number of issues was reduced from 43 to 8 as a consequence.

CCNRC asks the Board to find the County's CP noncompliant on four major issues: the County's land capacity analysis and population allocation analysis in establishing its urban growth areas (UGAs); the County's failure to conduct a concurrency analysis with respect to schools, particularly in the Battle Ground School District; the County's use of its Urban Holding designation; and failings alleged to be in the County's transportation element.

As for CCNRC's arguments on the County's assumptions and its land capacity analysis, the record shows that the County spent much time and sought advice from a wide-range of individuals and interest groups. The County grounded this advice with analysis from its technical staff and the technical staff of Clark County cities and special districts. A Steering Committee of all three County Commissioners and elected officials from each of Clark County's cities evaluated these recommendations. The Board finds that, in light of the conflicting data, the thorough analysis and discussion by the staff and elected officials of all Clark County jurisdictions and special districts, and the open public process, that the decisions Clark County made in regard to the land capacity assumptions are within the discretion afforded to local elected officials.

In regard to the inconsistencies between the County's population projections for different elements of Clark County's comprehensive plan, the Board finds that using a higher population projection to plan for transportation facilities is not inconsistent with the use of a lower population projection for other planning purposes; the use of one does not conflict with the use of the other, since the higher transportation numbers are used as a prudent

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

and more conservative planning approach to transportation issues without impacting the other elements of the CP.

Likewise, we find the difference between the land capacity assumptions of the County and that of the City of Vancouver not clearly erroneous and not unworkable. Both Clark County and the City of Vancouver adopted the same urban growth boundary. Where these jurisdictions differ is on how long the land capacity in the Vancouver UGA will last. RCW 36.70A.110(2) places the ultimate responsibility of sizing the urban growth areas with the County. This includes the assumptions used as the basis for sizing the UGAs. The City accepted the UGA boundaries established by the County, even though the City believes it can achieve greater densities through redevelopment and infill than the County assumes. Those differences do not create an inconsistency precluding achievement of any other feature of either plan. Furthermore, the County's urban holding designation for part of the Vancouver UGA, and its county-wide planning policy instituting plan monitoring, mitigate and monitor these differences over the life of the plan.

CCNRC's other challenges criticize the County's capital facilities planning results and the way Clark County applies concurrency. CCNRC asserts that the Growth Management Act (GMA) requires concurrency for school facilities and state transportation facilities. For schools, Petitioner bases this contention on the GMA's Goal 12, RCW 36.70A.070(3) - requirements for a capital facilities plan; the Western Board's Final Decision and Order in *Taxpayers for Responsible Government v. City of Oak Harbor,* WWGMHB Case No. 96-2-0002 (*Taxpayers*); and the fact that Clark County charges impact fees for schools. For state transportation facilities, Petitioner bases its challenge on RCW 36.70A.070(3) and (6) – the requirements for a GMA comprehensive plan's capital facilities and transportation elements.

We find it reasonable for the County to address schools as an "indirect concurrency" service, particularly because of the complex and multi-faceted method that school districts

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

must rely on to fund new school facilities; combining state funding based on need and state priorities, voter supported bond issues, and impact fees. We also find that the land use element and the capital facilities element are not inconsistent because the County's capital facilities element and the Battle Ground School District's capital facilities plan adopted by the County declare that school districts will provide a broad range of school facilities. The County's comprehensive plan also shows how permanent facilities will be funded, and discloses that when funding is not available for permanent facilities, school districts will provide facilities through temporary buildings. This information and disclosure makes the land use element and the capital facilities element consistent and complies with RCW 36.70A.070(3) and RCW 36.70A.020(12).

For state transportation facilities, CCNRC argues that the CP fails to disclose the level of service (LOS) deficiencies and needs and fails to include a multi-year spending plan for these facilities. As a result, CCNRC argues, that Clark County should have reassessed the land use element to make it consistent with achievable LOS standards. CCNRC argues that the County should meet the GMA requirements for state transportation facilities. However, in 1998 the legislature changed the requirements for the information required in local plans for state transportation facilities and relieved local governments from achieving concurrency for these facilities. The County has fulfilled the current GMA requirements by describing the conditions of the state highway system during the next 20 years, the impacts and effects these conditions will cause for the local system, and the local system impacts on state highways.

In another issue related to capital facilities and concurrency, CCNRC charges that the County's use of the urban holding designation is not compliant with the GMA. Urban holding is an overlay designation that the record shows the County believes is key to making its UGAs compliant. We find Clark County's Special Implementation Procedures, thorough and explicit concurrency regulations, and permitting process requirements rebut

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

CCNRC's claims that the Urban Holding overlays violate RCW 36.70A.070(3) and RCW 36.70A.020(12).

CCRNC assertions related to concurrency illustrate a common misconception about concurrency; that it guarantees a certain level of service that would raise the level of service and better the quality of life in local communities. However, the Legislature set no minimum or maximum standards for public facilities and services, leaving this to local governments to determine. What the GMA's concurrency principle guarantees is "truth in planning." That is: local governments must disclose the amount and quality of the services they will provide, how and where they will be provided, how much they will cost, and how they will be funded. Here, the County has used the discretion afforded by the GMA to make these choices in compliance with the Act. Clark County's revised comprehensive plan illustrates the extremely difficult choices cities and counties planning under the GMA must make with dwindling financial resources and increasing growth pressures.

Futurewise challenges the County's Urban Reserve (UR) and Industrial Urban Reserve (IUR) overlay designations on the grounds that these overlay designations fail to conserve agricultural lands and will allow interference with incompatible uses because these overlays earmark agricultural lands for future industrial uses.

The majority of the Board finds the use of the UR or IUR is not clearly erroneous. We agree with the past Clark County decision[1] of this Board that found this concept a compliant innovative technique for planning for future urban growth beyond GMA's mandated planning horizon. These properties given these overlay designations are designated agricultural lands of long-term commercial significance. The County has compliant agricultural conservation measures to prevent interference from incompatible uses. Also, we find that

[1] *Achen v. Clark County*, WWGMHB Case No. 95-2-067c (2nd Compliance Order, December 17, 1997)

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

Clark County's regulations governing a change in designation, as well as its codified criteria for bringing land into the UGA, conserve these lands within the 20-year mandated planning horizon.

II. PROCEDURAL HISTORY

This case that began as a result of 14 challenges to the Clark County 20 Year Comprehensive Growth Management Plan 2003-2023 and 43 issues is a shadow of its original. After a long and tangled Procedural History, two Petitioners, the Clark County Natural Resource Council, Futurewise, and eight issues remain. For a detailed review of this Procedural History, see Appendix A.

III. ISSUES PRESENTED

***Issue No. 6**: Did Clark County violate RCW 36.70A.110, which requires a land capacity analysis and population allocation consistent with population allocation and densities; RCW 36.70A.215, which requires periodic monitoring of development assumptions; and RCW 36.70A.070, which requires comprehensive plan elements to be internally consistent, by allocating excess residential growth to, and in the designation of Urban Growth Areas (UGA) for the City of Vancouver, where the County's erroneous allocations and designations include, but are not limited to:*

- ***Inconsistencies with Vancouver's land capacity analysis;***
- ***Analysis based on 8 units per acre versus the more accurate 9.5 units per acre;***
- ***Analysis based on 5 percent rather than the more accurate 10 percent redevelopment;***
- ***Internally inconsistent land and capital facility capacities, where road capacity is assumed at 556,000 people, compared to the VBLM assumption of 534,000 people.***
- ***County VBLM overstatement of lands which are not developable, where more than one half of Vancouver's October 2003 site-specific requests concerned land the County considered unbuildable over 20 years. Therefore, the Vancouver UGA can hold considerably more population than the County (and its VBLM) has projected. (Case No. 04-2-0023).***

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

***Issue No. 21**: Did Clark County violate RCW 36.70A.070(3) and RCW 36.70A.020(12) by failing to include at least a six-year financing plan for public school facilities within projected funding capacities that clearly identifies sources of public money by allocating any residential growth to, and in the designation of Urban Growth Areas for the City of Battle Ground, and the portion of Vancouver's Urban Growth Area served by the Battle Ground School District, where Clark County's Capital Facilities Plan identifies serious inadequacies in school levels of service and identifies no credible or probable funding to correct school deficiencies? (Case No. 04-2-0023).*

***Issue No. 22**: Did Clark County violate RCW 36.70A.020(12)'s goal 12 on public facilities and services, RCW 36.70A.070(3)'s provision on Capital Facilities, RCW 36.70A.070(6)'s provisions on transportation, and RCW 36.70A.070's provision on consistency, by adopting Urban Holding designations for Vancouver, Battle Ground, Camas, LaCenter, Ridgefield, Washougal, and Woodland that do not require full implementation and consistency with all applicable Capital Facilities Plans? (Case No. 04-2-0023).*

***Issue No. 23**: Did Clark County violate RCW 36.70A.070(3), (4) and (6) and RCW 36.70A.210(1) and (3) by failing to identify state and local transportation system needs to meet current and future demands, to include a multi-year financing plan based on these needs, and by failing to reassess land use plans if probable funding falls short? (Case No. 04-2-0023).*

***Issue No. 40**: Does adoption of Clark County Ordinance No. 2004-09-02 fail to comply with RCW 36.70A.020(1), RCW 36.70A.020(8), RCW 36.70A.040, RCW 36.70A.050, RCW 36.70A.060 and RCW 36.70A.130 when the application of Urban Reserve and Industrial Urban Reserve designations to agricultural resource lands of long term commercial significance fails to encourage and conserve agricultural resource lands and industry? (Case No. 04-2-0028).*

***Issue No. 41**: Does adoption of Clark County Ordinance No. 2004-09-02 fail to comply with RCW 36.70A.020(1), RCW 36.70A.020(10), RCW 36.70A.040, RCW 36.70A.060, RCW 36.70A.110 and RCW 36.70A.130 when the application of Urban Reserve and Industrial Urban Reserve designations to critical areas fails to protect the functions and values of those areas and encourages future urban growth into areas inappropriate to accommodate urban growth? (Case No. 04-2-0028).*

***Issue No. 42**: Does adoption of Clark County Ordinance No. 2004-09-02 fail to comply with RCW 36.70A.020(1), RCW 36.70A.020(8), RCW 36.70A.040, RCW 36.70A.050, RCW 36.70A.060, RCW 36.70A.110 and RCW 36.70A.110 when the comprehensive plan definition for Urban Reserve regarding application to resource lands fails to*

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

incorporate GMA criteria for designation of agricultural resource lands of long term commercial significance? (Case No. 04-2-0028).

<u>Issue No. 43</u>: Does the continued validity of the violations of RCW Title 36.70A (The Growth Management Act), described in Issue Nos. 40 and 42 above, substantially interfere with the fulfillment of the goals of the Growth Management Act such that the enactments at issue should be held invalid pursuant to RCW 36.70A.302? (Case No. 04-2-0028).

IV. BURDEN OF PROOF

For purposes of board review of the comprehensive plans and development regulations adopted by local government, the GMA establishes three major precepts: a presumption of validity; a "clearly erroneous" standard of review; and a requirement of deference to the decisions of local government.

Pursuant to RCW 36.70A.320(1), comprehensive plans, development regulations and amendments to them are presumed valid upon adoption:

> Except as provided in subsection (5) of this section, comprehensive plans and development regulations, and amendments thereto, adopted under this chapter are presumed valid upon adoption.

RCW 36.70A.320(1).

The statute further provides that the standard of review shall be whether the challenged enactments are clearly erroneous:

> The board shall find compliance unless it determines that the action by the state agency, county, or city is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of this chapter.

RCW 36.70A.320(3).

In order to find the County's action clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made." *Department of Ecology v. PUD1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

Within the framework of state goals and requirements, the boards must grant deference to local government in how they plan for growth:

> In recognition of the broad range of discretion that may be exercised by counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter, the legislature intends for the boards to grant deference to the counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter. Local comprehensive plans and development regulations require counties and cities to balance priorities and options for action in full consideration of local circumstances. The legislature finds that while this chapter requires local planning to take place within a framework of state goals and requirements, the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rests with that community.

RCW 36.70A.3201 (in part).

In sum, the burden is on the Petitioner to overcome the presumption of validity and demonstrate that any action taken by the County is clearly erroneous in light of the goals and requirements of Ch. 36.70A RCW (the Growth Management Act). RCW 36.70A.320(2). Where not clearly erroneous and thus within the framework of state goals and requirements, the planning choices of local government must be granted deference.

V. DISCUSSION

Issue No. 6: Did Clark County violate RCW 36.70A.110, which requires a land capacity analysis and population allocation consistent with population allocation and densities; RCW 36.70A.215, which requires periodic monitoring of development assumptions; and RCW 36.70A.070, which requires comprehensive plan elements to be internally consistent, by allocating excess residential growth to, and in the designation of Urban Growth Areas (UGA) for the City of Vancouver, where the County's erroneous allocations and designations include, but are not limited to:

- ***Inconsistencies with Vancouver's land capacity analysis;***
- ***Analysis based on 8 units per acre versus the more accurate 9.5 units per acre;***
- ***Analysis based on 5 percent rather than the more accurate 10 percent redevelopment;***

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

- ***Internally inconsistent land and capital facility capacities, where road capacity is assumed at 556,000 people, compared to the VBLM[2] assumption of 534,000 people.***

- ***County VBLM overstatement of lands which are not developable, where more than one half of Vancouver's October 2003 site-specific requests concerned land the County considered unbuildable over 20 years. Therefore, the Vancouver UGA can hold considerably more population than the County (and its VBLM) has projected. (Case No. 04-2-0023).***

A. Land Capacity Analysis

Positions of the Parties

CCNRC contends that Clark County's use of erroneous and unsupported assumptions caused it to oversize its UGA and violates RCW 36.70A.110. GMA Appeal Brief of CCNRC Issues 21, 23, 6, and 22 (CCNRC's Appeal Brief) at 14. Petitioner asserts that Clark County used a flawed two-step process for completing its land capacity analysis. First, Petitioner claims that the County's available land inventory excluded land that was available for development. Petitioner bases this assertion on a 2003 study done for a Vancouver UGA that showed that property owners had applied for development permits on over half the land that the County had excluded. Ibid at 16.

Second, Petitioner claims that the County relied on inaccurate growth assumptions. More specifically, Petitioner contends that the County's assumptions for the percentage of land for various categories that can be expected to redevelop is particularly flawed. For land needed to accommodate population growth, Petitioner contends that 10 to 20 percent of existing residential areas will redevelop while the County's assumed 5 percent of residential land would redevelop. For job growth and development, Petitioner states that from 20 to 60 percent of lands now used for job growth and development could be expected to redevelop

[2] Vacant Buildable Lands Model

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

based on the City of Vancouver's public testimony and the County's Focus Public Investment Report, while the County assumes only 5 percent of existing land needed for this use will redevelop. As for land needed for public needs, Petitioner says it is reasonable to expect 10 to 20 percent of this land to redevelop, based on a letter from WESD. Finally, Petitioner asserts that census data and recent technology reports make it reasonable to assume that 5 percent of job growth will occur from home based businesses, while the County assumes no job growth from this type of business. Ibid at 17.

Petitioner asserts the comprehensive plan is based on other flawed assumptions. Specifically, Petitioner disagrees with the assumption that commercial land will produce an average of 20 jobs per net acre for commercial and 9 jobs per net acre for industrial land when the County's Buildable Lands Analysis showed actual development at 22 acres for commercial land and 10 per acre for industrial land. Also, Petitioner asserts that the Buildable Lands Analysis does not consider the existing 20 percent vacancy rate on commercial and industrial lands. Ibid at 17.

County's Position

Clark County argues that the assumptions on which the County based its land capacity analysis were legitimate choices for the County to make and cites a letter supportive of these choices from the Washington Department of Community, Trade and Economic Development. Clark County Brief at 18. The County states that the choices were recommended by its Technical Advisory Committee (PTAC)[3] which reached a consensus recommendation on all the assumptions except for the amount of infrastructure that should be deducted from the amount of available land. Ibid. Since the committee was unable to reach consensus, the County based its assumption that 27.5 percent of the land would be devoted to infrastructure on a staff survey. Ibid. This percentage compares to the figure of

[3] County's abbreviation for this Committee. County's Appeal Brief at 18.

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

30 percent of the available land devoted to infrastructure that the Responsible Growth Forum assumed, based on a survey of eight subdivisions of their choosing, and the 20 percent of available buildable land devoted to infrastructure figure that "Friends" said occurred in other cities in the Metro area. Clark County Brief at 18.

The County also offers evidence of the conflicting recommendations on other assumptions that it received for determining land capacity. On the one hand, the City of Vancouver determined that the County's buildable lands model excluded redevelopable properties. Ibid at 19. On the other, the Building Association of Southwest Washington argued that the assumption of 70 percent of growth occurring on redevelopable properties was too high based on its available land studies, the 28 percent Metro "refill" rate and comparison with another county's (Snohomish County) assumption that 40 percent of its land will redevelop. Ibid. The County adds that its buildable land model counted lands that were 51 per cent or more developed that accounted for later permits on land assumed to be developed in the Vancouver UGA. Ibid at 19.

Clark County responds to Petitioner's argument that nothing in the record supports the assumption that 10 to 20 percent of population growth will occur on redeveloped land by citing to Exhibit 538. This exhibit shows use of 10-25 percent residential redevelopment factors in Gresham, Tigard and unincorporated Washington County, Oregon. Ibid at 18 and 19.

In response to Petitioner's argument that employment densities should be higher based on the Buildable Lands Analysis, the County says that the densities cited in the Buildable Lands Plan Monitoring Report (Exhibit 629) were based on 399 permits issued between 1995 and June 2000 for which matching employment information could be obtained. Information on existing employment densities was not analyzed. Clark County Brief at 20. Additionally, the County says the purpose of the Buildable Lands Monitoring Report was to

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

monitor how the existing plan performed, not as a directive on assumption for the plan review process. Ibid.

The County denies the CCNRC claim that it did not use the 25 percent and 50 percent market factor for commercial and industrial lands, respectively, in its capital facilities analysis. Ibid. The County refers to the Revenue Prospective (Exhibit 700), which states that "These growth assumptions are also those used for the capital facilities analysis." Ibid.

Intervenor Building Association of Clark County, et al., reminds the Board that CCNRC has a much higher burden of demonstrating the Clark County's assumptions and calculations are so erroneous and unreasonable that they constitute abuse of the broad discretion afforded planning jurisdictions by the GMA. Intervenor says that CCRNC implicitly accuses the County of "artificially deflating the number of acres with existing UGA boundaries in order to "justify expansive UGAs." Intervenor asserts that the issue for the Board is whether the County abused its discretion in making assumptions in the plan. Brief of Intervenors Building Association of Clark County, et al., on Issues 6, 21, 22, and 23 in Response to Brief of CCNRC at 1 and 2.

Board Analysis

On September 7, 2004, Clark County adopted an updated comprehensive plan. Ordinance No. 2004-09-02. This ordinance did not merely amend and update the existing plan; it adopted a new plan in its entirety:

> The 20-year land use plan is hereby adopted as the GMA Comprehensive Plan for Clark County.

Ordinance 2004-09-02, Section 2, at 8.

Petitioner CCNRC filed its petition for review on November 10, 2004. The petition does not challenge the County's compliance with RCW 36.70A.130, its 7-year update obligation, but challenges the new comprehensive plan for compliance with a variety of other GMA

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

requirements. Thus, while the County did meet its update requirements with its adoption of Ordinance No. 2004-09-02, the CCNRC challenges to that ordinance are not based in RCW 36.70A.130.

Issue 6 challenges the County's compliance with RCW 36.70A.110, 36.70A.215 and 36.70A.070 in the conduct of the land capacity and population allocation analysis used to establish urban growth boundaries (UGAs). However, CCNRC rests its argument on this issue primarily on its challenges to the land capacity analysis.

RCW 36.70A.110 requires the County to designate urban growth areas (UGAs) in its comprehensive plan. Each city in the County must be included in a UGA. RCW 36.70A.110(1). These UGAs must be sized to accommodate the population within the range of population projections given to the County by the Washington Office of Financial Management. RCW 36.70A.110(2). The requirements for creating and sizing a UGA are set out in RCW 36.70A.110. This section of the statute provides that UGAs must include areas and densities sufficient to accommodate the 20-year population projections by the Office of Financial Management (OFM):

> Based upon the growth management population projections made for the county by the office of financial management, the county and each city within the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding twenty-year period, except for those urban growth areas contained totally within a national historical reserve… An urban growth area determination may include a reasonable land market supply factor and shall permit a range of urban densities and uses. In determining this market factor, cities and counties may consider local circumstances. Cities and counties have discretion in their comprehensive plans to make many choices about accommodating growth.

RCW 36.70A.110(2) (in pertinent part).

RCW 36.70A.110(2) provides that county UGAs shall include areas and densities sufficient to permit the urban growth projected for the county by OFM. RCW 36.70A.110(2). This provision has been interpreted to also limit the size of UGAs as well as to ensure that the

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

UGA boundaries are sufficient to accommodate projected growth, in light of the anti-sprawl goal of the GMA. *Diehl v. Mason County,* 94 Wn.App. 645, 982 P.2d 543 (Div. II, 1999). "… [T]he OFM projection places a cap on the amount of land a county may allocate to UGAs." *Ibid* at 654. Thus, RCW 36.70A.110 requires that the UGAs be created to accommodate the OFM population projection for the 20-year planning horizon and also limits the size of UGAs to those lands needed to accommodate the urban population projection utilized by the county.

CCNRC first argues that the land capacity analysis is 'fundamentally flawed." GMA Appeal Brief of CCNRC Issues 21, 23, 6, and 22 at 18. This, CCNRC claims, is due to inaccurate assumptions and a failure to count potentially developable land. Ibid at 15-16. However, the County's record shows that there were conflicting views and conflicting evidence upon which to base the County's determination of available land for development. The County considered a range of possible assumptions in calculating its land capacity and chose to rely upon assumptions for which justification exists in the record. The County's explanations (see County's Position above) provide a reasonable basis for the choices that were ultimately made. CCNRC has not sustained its burden of proof on this point.

Second, CCNRC argues that the County's growth assumptions are unsupported in the record and, in some cases, contradicted by County reports. Ibid at 16 -17. The County asserts that its growth assumptions are valid choices made by the County. Clark County Brief at 18.

Growth assumptions as a basis for UGA boundaries are addressed in CTED's Procedural Criteria for Adopting Comprehensive Plans and Development Regulations. Ch. 365-195 WAC. CTED recommends that the determination of land necessary to accommodate growth include, among other things:

> A forecast of the likely future growth of employment and population in the community, utilizing the twenty-year population projection for the county in conjunction with data

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

> on current community population, recent trends in population, and employment in and near the community and assumptions about the likelihood of continuation of such trends. Where available, regional population and employment forecasts should be used.

WAC 365-195-335(3)(d)(i).

CCNRC does not argue that the County has failed to consider these factors, only that the County has relied upon the wrong numbers. However, the County has discretion in choosing assumptions based on reasonable criteria.

To develop the assumptions that Clark County would use to size its UGAs, the County appointed a steering committee of elected officials from all Clark County cities and a technical advisory committee (PTAC) that included these jurisdictions' planning staff and staff from special districts. Exhibit 637. These committees met regularly from 2000-2004 to examine data and make recommendations to the County Commissioners on various aspects of the comprehensive plan including assumptions on which to base the size of the urban growth areas (UGAs). Exhibits 8 -35. The minutes of the Steering Committee which included all the county commissioners, and an elected official from each of Clark County cities show that the Steering Committee gathered and analyzed a wide range of opinion and analysis based on studies done by diverse groups and the PTAC on what the assumptions should be for sizing the UGA. Exhibits 8 – 35. The PTAC reached a consensus recommendation on all the population assumptions for sizing the UGAs except one, the assumption about the amount of land assumed to be devoted to infrastructure. Petitioners and the City of Vancouver's objections and reasons for these objections were considered by all the groups advising the County Commission and the Commissioners themselves. For the PTAC one remaining item of dispute, the PTAC relied on its study of 50 subdivisions to use 27.5 percent for infrastructure. Exhibit 637.

///

///

///

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

CCNRC essentially argues that the County should have weighed the evidence differently in choosing between proposals. GMA Appeal Brief of CCNRC Issues 21, 23, 6, and 22 at 17-18. This is not sufficient to show that the County was clearly erroneous.

Conclusion: In light of the conflicting data, the thorough analysis and discussion by the staff and elected officials of all Clark County jurisdictions and special districts, and an open public process that involved a diversity of opinion, the decisions Clark County made in regard to the land capacity assumptions are within the discretion afforded to local elected officials and are not clearly erroneous according to RCW 36.70A.320.

B. Consistency Challenges

Positions of the Parties

CCNRC claims that the Clark County Plan is internally inconsistent and violates the requirement in RCW 36.70A.070 that all comprehensive plan's elements must be internally consistent by using a different figure for projected future population in its land capacity analysis than it uses in its capital facilities element. CCNRC Appeal Brief Issues at 18.

CCNRC also asserts that the County's plan fails to comply with RCW 36.70A.215 because it is not consistent with the plan of the City of Vancouver. GMA Appeal Brief CCNRC Appeal Brief at 19. The City of Vancouver's land capacity analysis shows room for 95,000 new people and 59,000 new jobs while the County's analysis shows room for only 79,000 new people and 39,000 new jobs.

CCNRC says that the land capacity analysis, by failing to include all the developable land and using inaccurate growth assumptions, violates 36.70A.100 and 110. The alleged inconsistency is in violation of 36.70A.215. Because the County did not correct this inconsistency, Petitioner contends this violates RCW 36.70A.215.

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

The County cites the Compliance Order - Transportation (November 16, 2000) in *Achen v. Clark County,* WWGMHB Case No. 95-2-0067 to argue that there is no absolute requirement that the population projections used in a comprehensive plan be the same in every part of the plan. In *Achen,* the Board found compliant a planning horizon for transportation planning that was different from that used in the land use element. The County says that, the transportation projections used here are higher than the population projections due to the added capacity provided for by the market factor. Clark County Brief at 21.

The County argues that the discrepancy between Vancouver's land capacity assumptions and the County's results from the fact that Vancouver has more capacity to invest in infrastructure improvements within the City, particularly in the downtown, than do the County and the other cities in Clark County.

Board Analysis

Inconsistency among the elements of Clark County's Plan

The internal consistency requirement for comprehensive plans arises from RCW 36.70A.070 which provides, in pertinent part:

> The plan shall be an internally consistent document and all elements shall be consistent with the future land use map.

The County acknowledges that the population forecast used for the basis of the County CP's land use element is different from the population used for transportation forecasting. The County says that this is due to the use of a market factor for commercial and industrial lands.

We agree with the County's statement that using a higher population for transportation planning is a conservative and prudent approach to planning for future transportation improvements that works to fiscally constrain Clark County's transportation plan.

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

Internal consistency among the parts of a comprehensive plan is defined in the Procedural Criteria (WAC 365-195-500):

> This means that each part of the plan should be integrated with all other parts and that all should be capable of implementation together. Internal consistency involves at least two aspects:
>
> 1. Ability of physical aspects of the plan to coexist on available land.
> 2. Ability of the plan to provide that adequate public facilities are available when the impacts of development occur (concurrency).

In this case the larger numbers utilized for transportation planning do not interfere with the ability of the physical aspects of the plan to coexist on available land; they simply provide a greater cushion for adequate transportation planning to support development. Second, the larger population projections for transportation planning purposes actually could further the plan's ability to provide for adequate public facilities, cause more phasing, and bring possible levels of service deficiencies into sharper focus during the County's annual review of its annual transportation plan update.

The inconsistency challenge as to the differences between the City of Vancouver's plan and the County's plan is based on RCW 36.70A.215(4):

> If the evaluation required by subsection (3) of this section demonstrates an inconsistency between what has occurred since the adoption of the county-wide planning policies and the county and city comprehensive plans and development regulations and what was envisioned in those policies and plans and the planning goals and the requirements of this chapter, as the inconsistency relates to the evaluation factors specified in subsection (3) of this section, the county and its cities shall adopt and implement measures that are reasonably likely to increase consistency during the subsequent five-year period. If necessary, a county, in consultation with its cities as required by RW 36.70A.210, shall adopt amendments to county-wide planning policies to increase consistency. The county and its cities shall annually monitor the measures adopted under this subsection to determine their effect and may revise or rescind them as appropriate.

This provision of the GMA does not require consistency between the city and county comprehensive plans. To bring a colorable claim for violation of this provision, a petitioner

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

would have to base the challenge in the evaluation component of RCW 36.70A.215(3). This CCNRC has failed to do.

CCNRC also alleges a failure to comply with RCW 36.70A.110:

> The comprehensive plan of each county or city that is adopted pursuant to RCW 36.70A.040 shall be coordinated with, and consistent with, the comprehensive plans adopted pursuant to RCW 36.70A.040 of other counties or cities with which the county or city has, in part, common borders or related regional issues.

RCW 36.70A.110.

The City of Vancouver adopted its comprehensive plan before Clark County, which included different land capacity assumptions. Exhibit 775 at 82, 84. The County and the City both adopted the same urban growth boundary for the City in their plan. Exhibit 130 at 57. Therefore, there is no difference in the two plans as to the physical boundaries of the City's UGA. The difference in their plans is how fast each jurisdiction believes that the UGA will last. The City expects to be able to redevelop and infill areas within the City's UGA at a rate that exceeds the County's assumptions. Exhibit 130 at 59. The County recognizes that the City has adopted this strategy but does not adopt it for the county as a whole. The County cites the limitations on this kind of modeling and the differences in the capacity of the county and the city for using discretionary funds to promote infilling in the manner Vancouver has.

Consistency, we have held, means that no feature of the plan or regulation is incompatible with any other feature of the plan or regulation. *CMV v. Mount Vernon,* WWGMHB 98-2-0006 (July 23, 1998, Final Decision and Order). Said another way, no feature of one plan may preclude achievement of any other feature of that plan or any other plan. *Carlson v. San Juan County,* WWGMHB 00-2-0016 (September 15, 2000, Final Decision and Order). Here the land capacity assumptions of the City and the County differ but do not affect the achievement of any feature of either plan. RCW 36.70A.110(2) places the ultimate responsibility of sizing the urban growth areas with the County. This includes the

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

assumptions used to base the UGAs' size. Therefore, the City accepted the UGA boundaries established by the County, even though the City believes it can achieve greater densities through redevelopment and infill than the County assumes. There is no inconsistency.

Further, the County was not unsympathetic to Vancouver's desire for infilling, downtown redevelopment, and willingness to invest in infilling incentives**.** The County included mechanisms in its plan to mitigate and monitor for these differences in vacant land capacity and infill rate. These measures are:

> (1) urban holding overlays in the Vancouver UGA that will phase development and allow Vancouver to concentrate its development in its urban core and near already available infrastructure – a laudable goal, and
>
> (2) the implementation of County-wide Planning Policy 1.1.17 that requires each municipality with Clark County to annually provide parcel specific information on land developed or permitted in residential, commercial, and industrial designations for the purpose of monitoring and analyzing potential development and employment capacity that will help both jurisdictions adjust assumptions based on actual data.

Conclusion: We find that the use of greater population projection figures for transportation planning purposes than used in the land use element does not create an internal inconsistency in the plan since the use of such larger figures actually promotes prudent transportation planning and does not interfere with any other planning purposes. Therefore, the Board does not find this difference in population forecasts is clearly erroneous. RCW 36.70A.320(2).

Further, the Board finds the County has not violated RCW 36.70A.100 or RCW 36.70A.215 with regard to the differences in the City of Vancouver and Clark County's land capacity assumptions; those differences do not create an inconsistency precluding achievement of any other feature of either plan.

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

<u>Issue No. 21</u>: Did Clark County violate RCW 36.70A.070(3) and RCW 36.70A.020(12) by failing to include at least a six-year financing plan for public school facilities within projected funding capacities that clearly identifies sources of public money by allocating any residential growth to, and in the designation of Urban Growth Areas for the City of Battle Ground, and the portion of Vancouver's Urban Growth Area served by the Battle Ground School District, where Clark County's Capital Facilities Plan identifies serious inadequacies in school levels of service and identifies no credible or probable funding to correct school deficiencies? (Case No. 04-2-0023).

Positions of the parties

<u>Petitioner's Position</u>

Petitioner CCNRC argues that Clark County has allocated new growth to urban growth areas without regard to existing deficiencies in school facilities and lack of funding to correct these deficiencies. Petitioner contends that this creates a significant concurrency problem and that concurrency for these facilities is a requirement, not just a goal and cites the July 16,1996, Final Decision and Order in *Taxpayers v. the City of Oak Harbor*, WWGMHB Case No. 96-2-0002(*Taxpayers*) support this contention. CCNRC Appeal Brief at 5 and 6. Petitioner alleges that the County finds that schools are "necessary to support development" and therefore, according to *Taxpayers*, these facilities must comply with RCW 36.70A.020(12) and direct concurrency requirements. Furthermore, Petitioner argues that it is inconsistent for the County to impose impact fees for schools as a facility needed to support new growth, and then argue that schools are not a necessary facility. CCNRC Reply Brief (May 24, 2005) at 6 and 7.

CCNRC argues that the County has allocated most its current urban growth to the Vancouver and Battle Ground urban growth areas (UGAs) and made UGA expansions in these UGAs. These are locations that the Battle Ground School District serves. Petitioner states that the County's own analysis shows that the Battle Ground School District is currently over capacity in 14 of its 16 schools, would need 10 to 12 new schools to serve the additional population in the expanded UGAs, as well as 3 schools to cure existing

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

deficiencies, and has a 90 million dollar deficit for meeting current needs. Petitioner argues that voter approved bonds needed to finance these new school facilities will fail to materialize based on the past failure of Battle Ground School District school bond proposals. CCNRC Appeal Brief at 6 and 7.

CCNRC also claims that the Clark County comprehensive plan and supporting documents contain no specific Level of Service (LOS) reduction other than a vague reference to future use of portable classrooms. Petitioner contends that the County's plan doesn't, but should include information on the cost, funding options, expansion plans, and locations for the use of portables. Petitioner concludes that this failure to describe a reduction in the LOS or reassess the land use element in light of capital facilities the deficit for schools described above violate RCW 36.70A.070(3) and RCW 36.70A.020(12). Ibid at 7 and 8.

County and Intervenor's Response

Clark County and Gramor Oregon, Inc., John Somarakis, Robert Frasier, and Gary Rademacher, Intervenors, maintain that the County can distinguish between facilities for which it can require direct concurrency and those for which it finds "indirect concurrency." Both the County and the Intervenors argue that this is consistent with this Board's holding in *Taxpayers for Responsible Government v. Oak Harbor,* WWGMHB Case No. 99-2-0002 (Final Decision and Order, 1996, County's Appeal Brief at 14 and 15). The County contends that the Battle Ground School District did not request that direct concurrency be required for its school facilities. County's Appeal Brief at 14.

Clark County states the Battle Ground School District uses portables to address growth impacts and voter approved bonds and state funds to finance permanent school facilities. The County points out that the nature of school facility funding is that it depends on the precariousness of voter approved bond issues and the showing of need by school districts to qualify for state funding. The County argues that this funding reality makes it impossible

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

to insist that no growth be allocated to areas where deficiencies exist in permanent school facilities. Interveners point out that Battle Ground School District voters approved a bond issue this spring, after the County's comprehensive plan adoption that fully funded these school district's planned permanent facilities for the next six years. Ibid at 12 and 13.

Petitioner replies that the bond issue will not fully fund these facilities and that even though the school bond issue passed, the County based its capital facilities plan on the assumption that the bond issue's passage was unlikely. CCNRC Reply at 8.

Board Analysis

Petitioner argues that the County's decision not require permanent school facilities for the Battle Ground School District at the time of development and to only require what the County calls "indirect concurrency" for schools violates RCW 36.70A.070(12) and RCW 36.70A.070A(3) due to the fact that the County imposes impact fees for schools. Through this decision, CCNRC argues the County has decided that permanent school facilities "are necessary to serve new growth and development,"[4] and should have required what the County calls "direct concurrency" by which the County requires facilities to support growth to be in place at the time of occupancy. Petitioner also cites the County's assumption that permanent facilities will be provided by successful Battle Ground School District bond issues, which have had a history of failure. This unsupported assumption, Petitioner argues, causes the County's comprehensive plan not comply with RCW 36.70A.070(3)(e) and RCW 36.70A.020(12). The County, on the other hand, maintains that it has more discretion on how to provide for these facilities. All parties argue that their position is consistent with this Board's Final Decision and Order in *Taxpayers.*

///

///

[4] RCW 82.02.050 (1)(b).

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

For schools, as well as other county-owned facilities and facilities owned by other entities, the County chose to use what it calls "indirect concurrency." Clark County defines indirect concurrency as follows:

> Indirect concurrency include storm drainage, public schools, parks, fire Protection, law enforcement, solid waste disposal, county buildings, electricity, natural gas, and telecommunications. These services are necessary to support growth in varying degrees, but have not been identified by the GMA as critical facilities to be applied using direct concurrency standards as in the case of roads, sewers, and water facilities.

Clark County 20 Year Growth Management Plan 2003 – 2023 (County CP) at 6-10.

To determine whether this concept is consistent with the GMA, we will examine the statutes that apply, pertinent provisions of WAC 365-195[5], and past Board decisions.

WAC 365-195-210 says "concurrency" means adequate public facilities are available when the impacts of development occur, and that this definition includes "adequate public facilities" and "available public facilities." The same guideline defines "adequate public facilities as facilities which have the capacity to serve development with decreasing levels of service below locally established minimums. WAC 365-195-210 also describes available public facilities that are in place to provide facilities or services within a specified period of time.

Concurrency is incorporated in the GMA in several ways. The first place is Goal 12 of the Act which states:

> Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

RCW 36.70A.020(12).

---

[5] Guidance provided by the Washington Department of Community, Trade and Economic Development for implementing the requirements of the GMA.

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

The requirements for the capital facilities elements also incorporates elements of concurrency:

> A capital facilities element consisting of: …e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent.

RCW 36.70A.070 (3)(e).

Also, the requirements for a comprehensive plan's transportation element requirement requires concurrency for local transportation facilities:

> A transportation element that implements, and is consistent with, the land use element: (a) The transportation element shall include the following subelements:… (D) Specific actions and requirements for bringing into compliance locally owned transportation facilities or services that are below an established level of service standard….(b) After adoption of the comprehensive plan by jurisdictions required to plan or who choose to plan under RCW 36.70A.040, local jurisdictions must adopt and enforce ordinances which prohibit development approval if the development causes the level of service on a locally owned transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development…
> "concurrent with the development" shall mean that improvements or strategies are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years.

RCW 36.70A.070(6)(a) and (b).

The Board's decision in *Taxpayers* also discusses the role of concurrency for various capital facilities. In that decision, the Board said:

> The general scheme of the GMA is that within the parameters of the goals and requirements of the Act, local governments have a wide variety of discretion to make localized decisions. *Clark County…* In determining what public facilities and services are "necessary to support development" a local government must consider all aspects of public facilities and public services and make a reasoned decision as to what facilities and services are necessary and how to subject those facilities and services to concurrency requirements. The resulting decision must be within the bounds of discretion afforded to local governments by the Act. *Clark County 1*.

Taxpayers for Responsible Government v. City of Oak Harbor, WWGMHB 96-2-0002 (Final Decision and Order).

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

In making this decision the Board looked to WAC 365-195-070(3) for guidance. That guidance says:

> The achievement of concurrency should be sought with respect to public facilities in addition to transportation facilities. The list of such facilities such facilities should be locally defined. The department recommends that at least domestic water systems and sanitary sewer systems be added within urban growth areas, and domestic water systems outside of UGAs….With respect to facilities other than transportation and domestic water systems local jurisdictions can fashion their own regulatory responses…

WAC 365-195-070(3).

The County has followed the advice provided WAC 365-195-070(3), the same advice the Board looked to in *Taxpayers*. The County requires concurrency for transportation, water, and sanitary sewer systems. For schools, as well as other county-owned facilities and facilities owned by other entities, the County chose "indirect concurrency."

We do not agree with the Petitioner that because the County has agreed to impose impact fees developed by the school district that the County has decided *de facto* to provide direct concurrency. For cities and counties planning according RCW 36.70A.040, impact fees are authorized by the Legislature as a source for some, but not all of the funding for certain capital facilities delineated in counties and cities' capital facilities plan. RCW 82.02.060. Imposition of impact fees is a decision to employ a certain authorized funding source, not a decision to impose concurrency. Also, the County has not decided that schools are not necessary to support growth, but that permanent facilities will not necessarily be in place at the time of development.

Clark County demonstrates the reasonableness of choosing indirect concurrency as a way of providing for public schools by describing how the State of Washington school funding regulations:

> State funding regulations result in new facilities usually being constructed after the growth has occurred and need can be demonstrated. School districts are also cautious not to overbuild permanent buildings since the average lifespan of a school

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

> is fifty years and growth may significantly increase and declined during that time. For these reasons, "portable" and "temporary" classrooms are common in fast growing school districts. Clark County CP at 6-12.

The Board finds the County's decision to use indirect concurrency as a way for schools to provide for facilities to support development is reasonable due the complex and multi-faceted method that school districts in general, and the Battle Ground School District, in particular, must rely on to fund new school facilities, by combining state funding based on need and state priorities, voter supported bond issues, and impact fees. This complicated and often controversial funding strategy makes the County's choice of subjecting schools to "indirect concurrency" reasonable and consistent the local discretion that *WAC* 365-195-070(3) advice on how capital facilities can be provided for schools to meet the requirements RCW 36,70A.070(3) and the direction of Goal 12, the public facilities and services goal of the GMA.

Just as cities and counties have discretion to determine for which facilities, they will mandate concurrency, they also have discretion as to the level of service new development will be required to meet. The Legislature set no minimum or maximum standards for public facilities and services and left this to local governments to determine. If the local government determines through the development process that the locally set level of service can't be met, they have several options. They can adjust their capital facilities plan to add more money, they can lower the level of service, or they can reassess the land use element to allow less development or phase development. In this case, Petitioner implies that the level of service for schools that the District set and the level of service County adopted is permanent school facilities at the time of development. However, the record shows that this is not the case. The level of service that the County and the District set is permanent facilities over the life of the plan with temporary portable facilities to fill the needs when other sources of funds are delayed. While a higher level of service might be desirable, it is within the County's discretion to set a lower one, without violating RCW 36.70A.070(3).

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

The County's capital facilities plan describes the level of service for school facilities in the urban area as "full range of school facilities." County's CP at 6 – 34. The Battle Ground School District capital facilities plan (CIP) for 2003 - 2009, adopted by reference as part of the County's comprehensive plan, sets a level of service based on standards set by the State Board of Education and Washington Superintendent of Public Instruction. This CIP portrays how the District plans to fund permanent facilities through the combination of funds described above and discloses that it will use impact fees to serve short-term and immediate needs. Exhibit 325 at 4.

Furthermore, Clark County capital facilities planning goals and policies commit to working cooperatively with schools to ensure these facilities meet RCW 58.17.110's requirement that adequate school facilities will be provided before subdivision approval. Schools Goal and Policy 6.9.1, County CP at 6-31. The County's capital facilities plan generally explains the new facilities that the Battle Ground School District plans to build and how the District plans to finance these facilities. A footnote discloses that 4.8 million dollars collected from impact fees is for portables. County CP at 6 – 14. Capital facilities policy 6.5.7 also responsibly commits the County to provide impact fees as a funding source for schools. County CP at 6 – 14.

While the record indicates that the County Commissioners were clearly concerned about the past failure of the District's school levies, the record shows that the Commissioners and School District determined that urban holding zones could mitigate the pressure on permanent facilities. Also, after the County's CP's adoption, the voters in the School District passed a bond issue that secured funding for permanent facilities for the next six years. We also find that RCW 36.70A.070(3)(c) does not demand that the costs and locations of portables be included in the CIP due to their temporary nature. Also, the successful bond levy, although passed after the adoption of the comprehensive plan, makes permanent financially feasible during the first six years of the plan.

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

Conclusion: Based on the information included in the County's capital facilities element, the District's capital facilities element adopted by the County as part of its plan, and the capital facilities goals and policies provide disclosure to the citizens of Clark County on what level of service and type of facilities that can expect for schools in the Battle Ground School District within the UGAs served by the district. This information makes the capital facilities plan and the land use element coordinated and consistent and compliant with RCW 36.70A.070(3) and the direction given by RCW 36.70A.020(12). Petitioner has not met its burden of proof that the County's decision to subject school facilities is clearly erroneous according to RCW 36.70A.320(2).

Issue No. 22: Did Clark County violate RCW 36.70A.020(12)'s goal 12 on public facilities and services, RCW 36.70A.070(3)'s provision on Capital Facilities, RCW 36.70A.070(6)'s provisions on transportation, and RCW 36.70A.070's provision on consistency, by adopting Urban Holding designations for Vancouver, Battle Ground, Camas, LaCenter, Ridgefield, Washougal, and Woodland that do not require full implementation and consistency with all applicable Capital Facilities Plans? (Case No. 04-2-0023).

Petitioner's Position

Petitioner CCNRC describes the County's comprehensive plan's Urban Holding designation as a development phasing mechanism, where properties given this designation must meet certain criteria before development at urban standards is allowed. While CCNRC acknowledges that this specific phasing requirement is not required by the GMA, CCNRC argues that when the County adopts this mechanism, then the mechanism must comply with the GMA. CCNRC's Appeal Brief at 20 and 21. CCNRC contends the Urban Holding designation does not comply because to have the Urban Holding designation lifted, properties must only demonstrate that urban services are available rather than meeting the capital facilities plan's LOS. Petitioner asserts lack of this requirement makes the Urban Holding designation inconsistent with Goal 12 of the GMA that requires public facilities and services to support development, and GMA capital facilities planning, transportation concurrency, and consistency requirements. CCNRC's Appeal Brief at 20 and 21.

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

CCNRC says that this designation results in project-by-project planning without capital facilities standards. Petitioner argues that the Board has said that failure to set an LOS is failure to engage in appropriate capital facilities planning and cites the October 15, 2002, compliance order Case No. 02-2-0008, *Klein v. San Juan County.* Ibid at 21.

CCNRC points to various places in the record where Clark County suggested that the Urban Holding designations would ensure that capital facilities would be provided to serve urban growth expansions. However, CCNRC argues that property owners only have to show that full urban services are available and can connect to these services without having the County address subarea or system-wide needs, LOS issues, feasible funding, or other capital facilities planning issues required by the GMA. Ibid at 24.

County's Position

Clark County maintains that the Urban Holding technique is an innovative technique, not required by the GMA; therefore, the technique is not subject to GMA requirements. The County asserts that the GMA does not require the impossible; full implementation of the capital facilities plan before a property can be included in the urban growth area. Finally, the County states concurrency goals and requirements prevent premature development of the UGA without urban services. Clark County Brief at 22.

Board Analysis

RCW 36.70A.110(3) sets out the requirements for locating urban growth areas. It provides:

> Urban growth should be located first in areas already characterized by urban growth that have adequate existing public facilities and services, second in areas characterized by urban growth that will be adequately served by a combination of both existing and public facilities and services that are provided by either public or private resources, and third, in remaining portions of the UGA.

RCW 36.70A.110(3).

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

This requirement clearly suggests that phasing of growth was envisioned in the GMA to prevent low density development within the UGA before urban services are available.

Clark County's urban holding designation is an overlay designation within the County's urban growth areas (UGAs) that establishes maximum residential densities of one unit per 10 acres, one unit to 20 acres, and one unit to 40 acres until urban services are available. When services are available, the area can develop to its ultimate urban density. County CP at 1-16. Both CCNRC and the County agree that the Urban Holding designation is an innovative technique used to accomplish phasing within the urban growth areas (UGAs), but disagree on whether these areas are, or even need to compliant with the GMA. The Board agrees with CCNRC on this threshold issue. While there are other techniques that the County could use to phase growth, the County chose the Urban Holding overlay as its phasing method; therefore it must comply with the GMA. RCW 36.70A.040. Further, this Board has held that the GMA obligates the County to develop policies "to ensure that development [in the UGAs] is truly urban and efficiently phased," particularly if the County adopts a large UGA. *Abenroth v. Skagit County*, WWGMHB Case No. 04-2-0060c (Final Decision and Order, January 23, 1997). While we agree with the County that according to RCW 36.70A.110(3), all capital facilities planning for UGAs need not be complete upon comprehensive plan's adoption, the Board has held in several decisions that if the capital facilities cannot be provided at the time of the plan adoption, a compliant phasing plan is essential to prevent sprawl and comply with RCW 36.70A.110(3) and RCW 36.70A.020(2). See Evergreen Islands v. Skagit County, WWGMHB Case No. 00-2-0046c (Final Decision and Order, February 6, 2001), Custer v. Whatcom County, WWGMHB Case No. 96-2-0008 (Final Decision and Order, September 12, 1998), and TRC v. Oak Harbor, WWGMHB Case No. 96-2-0002 (Final Decision and Order, July 16, 1996).

In fact, Clark County used urban holding zones in its first GMA comprehensive plan adopted in 1995 to phase growth. In this Board's September 20, 1995, Final Decision and Order in

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

Achen v. Clark County, WWGMHB Case No. 95-2-0067c, the Board found urban holding areas a compliant phasing method for phasing growth:

> The concept of the urban holding area within an urban growth area furthers the concurrency goals and requirements of the Act. The use of such a concept is in the discretion afforded to local decision makers.

Achen v. Clark County, WWGMHB Case No. 95-2-0067c (Final Decision and Order, September 20, 1995).

The record is replete with evidence that shows that the County, in fact, believes it needs the Urban Holding overlay to make its plan compliant. The Final Environmental Impact Statement (FEIS), the County's Capital Facilities Summary Report, and advice from the County's legal counsel show that the County had information that the urban holding zone was essential to making the plan's preferred alternative compliant due to the lack of completion of a full range of capital facilities planning for the UGAs. Exhibit 65 (FEIS) at 62, Clark County Capital Facilities Plan Summary Report at 27 and 75, and Exhibit 58 at 13.

Therefore, the Board will examine the County's use of the Urban Holding overlay as effective and compliant tool for phasing urban growth within its UGA. The County's CP contains similar criteria for removing the Urban Holding designations in all of the County's municipal UGAs. These criteria include the following provision for removal of an urban holding overlay designation: "removal of urban holding shall be by subarea appropriate for consideration for appropriate capital facilities, and not by individual site specific properties….. "County CP at 12-5, - 12-19. Removal of the urban holding zone also requires a decision of the County Commissioners. County CP a 12-5 to 12-9. Certain properties require a master plan. County's CP at 12-6 to 12-9.

The County maintains that its concurrency ordinance will ensure that urban services will be available to serve the development when urban levels of development are allowed. In response to Board questions, the County provided copies of its concurrency regulations. These regulations are detailed and explicit. Clark County Code 40.350.020.

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

Applicants for development permits in UGAs also must have a review by sewer and water providers and connection to the public sewer and water are required, with a few limited exceptions. Clark County Code Sections 40.370.10, 40.370.20, and 40.510.050.

Conclusion: We find that the County's Special Implementation Procedures, its thorough and explicit concurrency regulations, and its permitting process requirements rebut CCNRC's claims that the Urban Holding overlays violate RCW 36.70A.070(3) and RCW 36.70A.020(12). In fact, we observe that the Urban Holding designations here work to phase development by keeping land from developing at sprawl-like densities before necessary urban services are available. This will make it possible to achieve higher urban densities eventually. Petitioner has not met its burden of proof that the Urban Holding designations do not comply with the RCW 36.70A.070(3) and RCW 36.70A.020(12) pursuant to RCW 36.70A.320(2).

Issue No. 23: Did Clark County violate RCW 36.70A.070(3), (4) and (6) and RCW 36.70A.210(1) and (3) by failing to identify state and local transportation system needs to meet current and future demands, and to include a multi-year financing plan based on these needs, and failing to reassess land use plans if probable funding falls short? (Case No. 04-2-0023).

Positions of the Parties

Petitioner's Position

Petitioner CCNRC argues that by not responding to the funding and level of service (LOS) deficiencies that Clark County's comprehensive plan fails to implement the concurrency requirement of the GMA. CCNRC maintains that adequate transportation facilities constitute the most significant facility needs in both the size and the cost of the concurrency problem. GMA Appeal Brief of CCNRC Issues 21, 23, 6, and 22 at 9.

CCNRC notes that the Draft Environmental Impact Statement (DEIS) and the Final Environmental Impact Statement(FEIS) depict the deficiencies of Washington State

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

Highway System in Clark County but that the County "responded by simply removing the State's funding deficiencies from the FEIS and the Capital Facilities Plan analysis." GMA Appeal Brief of CCNRC Issues 21, 23, 6, and 22 at 10. The DEIS estimates the cost of improvements to the state and local transportation system ranging from $1.8 to $2.4 billion, and the FEIS estimates the state system cost for the preferred alternative is $1.3 billion, Ibid at 9.

CCNRC asserts that the Washington State Department of Transportation has severe funding problems and plans to fund only four state system improvements in Clark County during the comprehensive plan's 20-year planning period; this is only half of what historically been spent on the state system in Clark County. Ibid at 9-10. Petitioner contends that the County's comprehensive plan will dramatically increase the use of the state system. Ibid at 11. Petitioner states that the County's final adopted County CP shows that it would cause 18 links in the state system to fail, but contends that the failures will be worse than this, due to the plan's speculative assumption that reasonably funded projects will be built. Ibid at 11. CCNRC observes that even those projects are unlikely to be built due to the state's severe funding problems. Ibid at 12.

CCNRC contends that the GMA requires analysis of funding capability in order to assess public facility needs against public resources. CCNRC argues that the plan's lack of needs, costs, and funding capability analysis violates RCW 36.70A.070(6), and the plan's failure to reassess the land use element in light of these deficiencies violates RCW 36.70A.070(3)(e). CCNRC also argues that the County had to lower its adopted level of service standards; raise the needed funding; or reassess its land use plan. Ibid at 13. The failure to do any of these, CCNRC argues, is reversible error. Ibid.

///
///

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

County and Intervenor's Position

The County contends the fundamental flaw in CCNRC's argument is that the law upon which CCNRC relies has been amended. Clark County Brief at 16. The Final Decision and Order in *Achen v. Clark County,* WWGMHB Case No. 95-2-0067c was issued in 1995. RCW 36.70A.070(6) was amended in 1998 to eliminate any "consistency" requirement with state transportation facilities. Ibid. RCW 36.70A.070(6)(iii)(C) now provides that the county plan must reflect the level of service standards for state highways but only for the purposes of monitoring performance of the system, evaluating improvement strategies, and coordinating the county's road program with the state department of transportation's six-year program. Ibid.

The County and Intervenor assert that the GMA requires only the following: identification of impacts of local land use assumptions on state highway LOS standards and projected needs. The purpose for identifying these in the plan is to assure monitoring, coordination, and planning between the local and state systems. Clark County Brief at 16.

The County acknowledges that the under the current state funding scenario the state highway system in Clark County will not maintain the established LOS over the 20-year planning period. However, the County argues, the Board is no longer a forum in which deficiencies of the state transportation system are addressed. Ibid.

Intervenor notes that RCW 47.05.030 requires the State Transportation Commission to adopt a six-year program to address the needs on state facilities and maintains that it is not the County's obligation to fund state facilities. Intervenor's Brief at 13 and 14.

Board Analysis

The Legislature amended RCW 36.70A.070(6) in 1998 (after the *Achen* decision) to clarify the planning obligations of cities and counties for state transportation facilities. The

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

statutory amendment eliminated the concurrency requirement in local plans for state highways and facilities of statewide significance.[6] RCW 36.70A.070(6)(a)(ii), RCW 36.70A.070(6)(iii)(C)(F), and RCW 36.70A.070(a)(iv)(B) describe the planning obligations for cities and counties planning according to RCW 36.70A.040 for state transportation facilities:

> (6) A transportation element that implements, and is consistent with, the land use element.
> (a) The transportation element shall include the following subelements;
> …
> (ii) Estimated traffic impacts to state-owned transportation facilities resulting from land use assumptions to assist the department of transportation in monitoring the performance of state facilities, to plan improvements for the facilities, and to assess the impact of land-use decisions on state-owned transportation facilities;.
> (iii) Facilities and services needs, including:
> : …
> (C) For state-owned transportation facilities, level of service standards for highways, as prescribed in chapters 47.06 and 47.80 RCW, to gauge the performance of the system. The purposes of reflecting level of service standards for state highways in the local comprehensive plan are to monitor the performance of the system, to evaluate improvement strategies, and to facilitate coordination between the county's or city's six-year street, road, or transit program and the department of transportation's six-year investment program. …
> (F) Identification of state and local system needs to meet current and future demands. Identified needs on state-owned transportation facilities must be consistent with the statewide multimodal transportation plan required under chapter 47.06 RCW…

RCW 36.70A.070(6)(a)(ii), (6)(a)(iii)(C) and (F).

Therefore, the County's obligations relative to state highways in its plan is to estimate traffic impacts to state-owned transportation facilities, to include state-adopted levels of service standards for the purpose of monitoring the system's performance, evaluating improvement

[6] Legislative History listed at the end of RCW 36.70A.070(6).

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

strategies, and to identify the needs of state-owned transportation facilities consistent with the state's multi-modal plan.

The Board concludes that the 1998 amendments to the GMA relieve the County from the other requirements that CCNRC contends are the County's responsibility. In the past the Board has concluded that the Legislature did not impose on counties and cities requirements that are impossible to meet. See *Taxpayers for Responsible Government*, WWGMHB 96-2-0002 (July 16, 1996). The County has no authority to alter levels of service standards for state transportation facilities. That authority rests with the Washington State Transportation Commission. Nor does the County have responsibility to make ultimate decisions concerning improvements to the state highway system, or to raise needed funding. WSDOT has the responsibility for planning these facilities, while the Legislature has the ultimate responsibility of deciding what facilities will be built and how they will be funded. Without these assigned responsibilities or capabilities it is not possible for the County to comply with RCW 36.70A.070(3) for state transportation facilities. Therefore, CCNRC has not met its burden of proof that the county plan does not comply with RCW 36.70A.070(3).

The County's CP includes the information required by RCW 36.70A.070(6)(a)(ii) and (iii)(C) for state transportation facilities as follows: estimates of traffic volumes on state facilities at CP 5-5(RCW 36.70A.070(6)(a)(ii), existing deficiencies cause by traffic estimates at CP 5-6 (RCW 36.70A.070(6)(a)(ii), future deficiencies at CP 5-7 (RCW 36.70A.070(6)(a)(iii)(F)), and level of service standards for highways of state-wide and regional significance at CP 5-8 (RCW 36.70A.070(a)(iii)(B)). The County used a traffic model based on proposed land use patterns to project future traffic volumes, and worked with cities and counties, the regional transportation council and the Washington State Department of Transportation to identify future deficiencies. County CP at 5.

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

CCNRC ably describes the grim future for state transportation facilities in Clark County. The County does not dispute this depiction and the County's transportation element reflects it.

In its Petition for Review, CCNRC alleges that the County CP violates 36.70A.070(4) and 36.70A.210 but in its brief does not argue how the CP violates these statutes. Therefore, the Board will not address violations of those statutes.

Conclusion: The County CP's Transportation Element shows the County has completed the requirements needed to be included in the plan in regard to state transportation facilities. The County's CP complies with RCW 36.70A.070(3)(4)(6) and 36.70A.210(1) and (3).

As for the other alleged violations of RCW 36.70A.070(6) and RCW 36.70A.070(3) for the reasons cited above, we find that CCRNC has not carried its burden of proof that the County erred in fulfilling the requirements of RCW 36.70A.070(6). For state highways of statewide or regional significance, RCW 36.70A.070(3) does not apply.

Issue No. 40: Does adoption of Clark County Ordinance No. 2004-09-02 fail to comply with RCW 36.70A.020(1), RCW 36.70A.020(8), RCW 36.70A.040, RCW 36.70A.050, RCW 36.70A.060 and RCW 36.70A.130 when the application of Urban Reserve and Industrial Urban Reserve designations to agricultural resource lands of long term commercial significance fails to encourage and conserve agricultural resource lands and industry? (Case No. 04-2-0028).

Issue No. 41: Does adoption of Clark County Ordinance No. 2004-09-02 fail to comply with RCW 36.70A.020(1), RCW 36.70A.020(10), RCW 36.70A.040, RCW 36.70A.060, RCW 36.70A.110 and RCW 36.70A.130 when the application of Urban Reserve and Industrial Urban Reserve designations to critical areas fails to protect the functions and values of those areas and encourages future urban growth into areas inappropriate to accommodate urban growth? (Case No. 04-2-0028).

///

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

<u>Issue No. 42</u>: Does adoption of Clark County Ordinance No. 2004-09-02 fail to comply with RCW 36.70A.020(1), RCW 36.70A.020(8), RCW 36.70A.040, RCW 36.70A.050, RCW 36.70A.060, RCW 36.70A.110 and RCW 36.70A.110 when the comprehensive plan definition for Urban Reserve regarding application to resource lands fails to incorporate GMA criteria for designation of agricultural resource lands of long term commercial significance? (Case No. 04-2-0028).

<u>Issue No. 43</u>: Does the continued validity of the violations of RCW Title 36.70A (The Growth Management Act), described in Issue Nos. 40 and 42 above, substantially interfere with the fulfillment of the goals of the Growth Management Act such that the enactments at issue should be held invalid pursuant to RCW 36.70A.302? (Case No. 04-2-0028).

At argument, Futurewise declared that it was abandoning Issue 41. We will discuss related issues 40, 42, and 43 together.

<u>Petitioner's Position</u>

Petitioner Futurewise challenges both the Urban Reserve (UR) and the Industrial Urban Reserve (IUR), which are overlay designations for the following four areas: Vancouver 179th Street, Vancouver 162nd Street, City of Washougal, and City of Ridgefield. Futurewise cites a Supreme Court Case[7] that determined that the RCW 36.70A.020(8), .060(1), and .170 when read together created evidence of a legislative mandate to conserve agricultural land. Futurewise's Prehearing Brief at 6. Futurewise maintains therefore Clark County has the responsibility to conserve lands that continue to meet the GMA's criteria for agricultural lands of long-term commercial significance. Petitioner then shows how the lands that have been included in the urban reserve overlay or industrial reserve overlay continue to meet the GMA criteria for agricultural lands of long-term commercial significance. Futurewise's Prehearing Brief (April 26, 2005) at 7 through 14.

[7] *King County v. Central Puget Sound Hearings* Board, 142 Wn.2d 543 (2000).

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

Futurewise argues that the County should have applied GMA criteria for the designation of agricultural lands of long-term commercial significance before it applied the UR or IUR overlay to designated agricultural lands and should not have applied these overlay designations since these lands still met the criteria for designation as agricultural lands. Petitioner also asserts that once agricultural lands are designated, the County must adopt regulations that assure these lands will be conserved and that the use of adjacent lands does not interfere with the conservation of designated agricultural lands. Futurewise contends that the UR and IUR overlays do not conserve designated lands or protect them from interference from incompatible uses. Futurewise's Prehearing Brief at 13 and 14.

Therefore, Futurewise contends that these overlay designations violate the GMA's conservation imperative in the following ways:

- Imposing urban overlays violates RCW 36.70A.060(1) because declaring these lands are specifically targeted for urban designation discourages farmers from investing in agriculture. Instead these overlays encourage farmers to begin planning for the day the land will be no longer designated or zoned for agricultural land.

- These overlays by definition lead to de-designation of agricultural land and the lost of farmlands affected by the overlays and therefore fails to conserve farmlands.

- By imposing these overlays to agricultural land, the County fails to protect the adjacent farmland from incompatible development, creates a justification for conversion of adjacent lands to urban development, and begins a perpetuating cycle of conversion. Futurewise's Prehearing Brief at 2 and 3.

County's Position

Clark County says that this Board in its September 17, 1995, Final Decision and Order in *Achen v. Clark County,* WWGMHB Case No. 95-2-0067c found the concepts of Urban Reserve and Industrial Urban Reserve overlay designations acceptable if these lands that met the County's agricultural designation criteria were not exclusively designated with overlay, but were also designated as agricultural lands. The County cites this 1995 Final Decision and Order and the December 17, 1997, Compliance Order in *Achen.* The County

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

notes that these designations were either contained in the 1994 County comprehensive plan or were designated as a result of the remand work required by the *Achen.* The County contends that the present challenges are foreclosed by the Board's 2nd Compliance Order (December 17, 1997) in *Achen.* County's Appeal Brief at 3, 4, and 8.

The County maintains that it has adopted regulations to conserve designated agricultural land and ensure that adjacent uses do not interfere with their conservation. These regulations are compliant and have not been challenged. The County asserts that challenged UR and IUR designations are truly conserved designated agricultural lands. Ibid at 9.

The County argues that these lands have not been de-designated, are not part of a UGA, and must go through a comprehensive amendment process to be de-designated. At the time the designation of the lands change, then a challenge to the change would be appropriate, but is not appropriate at this time, because the actual designation of the lands where the overlay has been applied has not changed. Ibid at 11 and 12.

Intervenor's Position

Intervenor Renaissance Homes cites a letter submitted to the County as part of its update process that argues that Intervenor's property (the 179th Street area) should not be designated agricultural lands and should be part of the Vancouver UGA. In this letter, Intervenor contends the property no longer meets the GMA criteria for agricultural land designation. The reasons Intervenor uses to support his argument that its property should be de-designated include the property's proximity to the I-5 and the Washington State University –Vancouver Campus, some of the EIS's alternatives included the property in the Vancouver UGA, utilities and services can be extended to the site easily, proximity to the urban area, and that much of the property lacks prime soils. Exhibit "A" at 2 through 8. Despite these reasons that Intervenor used to justify de-designation its property as

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

agricultural lands and for inclusion in the UGA, Intervenor notes that this property has been designated agricultural land for 11 years. The County declined to de-designate the property and include it in the Vancouver UGA during the adoption of the 2004 County CP adoption process. Intervenor Renaissance Homes Response to Petitioner Futurewise Prehearing Brief (May 17, 2005) at 2.

Board's Analysis

In its 1995 Final Decision and Order in *Achen v. Clark County*, WWGMHB Case No. 95-2-0067c, the Board held that the UR and the IUR did not violate the GMA and commended it as an "innovative technique":

> Long range planning for a time-frame in excess of 20 years does not violate the GMA and is a laudable planning achievement. We take official notice that other states with longer histories of GMA planning than we, are experiencing problems with the proliferation of 5 acre or less lots adjacent to urban growth boundaries when the time for expansion of the UGA arrives. Contrary to some petitioners' assertions, GMA does not require all planning to stop at the end of the 20 year period.

Achen v. Clark County, WWGMHB Case No. 97-2-0067c (Final Decision and Order, September 20, 1995) at 33.

Nevertheless, the Board had concerns about the concept's execution. For Urban Reserve and Industrial Reserve Overlays to be compliant the Board held that they could not be designated as an overlay exclusively, that lands which had been given this overlay designation which met the criteria for agricultural lands of long-term commercial significance also needed to be designated as agricultural lands, prime industrial lands in the UGAs needed to be protected in order not to cause premature conversion of UR and IURs, and strict criteria for bringing land into the UGA was needed.

After the County addressed the Board's noncompliance issues, the Board found these designations in compliance:

> The County also placed an URA overlay over the RL designations. …The areas in dispute are now properly designated as resource lands and the overlay for post 20-

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

year planning purposes does not violate the GMA. Clark County is in compliance on this issue.

Achen v. Clark County, WWGMHB Case No. 95-2-0067c (2nd Compliance Order, December 17, 1997).

Three challenged overlay designations, Vancouver 179th Street, Washougal, and Ridgefield Areas, have had these designations since the 1997 remand, and were found compliant at that time. In 2004 County CP, the County gave the Vancouver 117th Street and Vancouver 162nd areas, similar overlay designations as one method of implementing the County CP's major themes to increase the jobs to population ratios by preserving large parcels at key locations for future industrial sites.

The County has not changed the manner or the conditions in the way it applied UR or IUR designations to agricultural lands in the 2004 County CP, nor have the GMA requirements for designating or conserving agricultural land changed since the Board's 1997 decision that found these overlay designations compliant. Futurewise cites the 2000 *Soccer Fields* case holding that that the goals and requirements of the Act mandate that counties must assure the conservation of designated agricultural land as a change in circumstances that the Board should reconsider its previous decision regarding these designations and find these overlay designations noncompliant and invalid.

The County does not disagree with Futurewise that these lands that have a UR or IUR designation still meet the County's criteria for designated agricultural land and should be designated agricultural lands. In fact, the lands with these overlays are designated agricultural lands as this Board ruled in *Achen* that they must.

The County conserves these lands through development regulations that have not been challenged. If a property owner wants to change the designation of commercially significant agricultural land that also has a UR or IUR overlay, that applicant would still have to meet the criteria for map changes outlined in CCC 40.50.010 G, as would any other owner of

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

commercially significant agricultural land. Appendix A attached Clark County's Supplemental Submission (July 21, 2005). To bring this land into a UGA, a map change must be made through a legislative decision based on established need using specific criteria must be made. CCC 40.560.010 D, G, and I.

Furthermore, three areas have had these overlay designations since 1997. The County planned for the next 20 years in its current CP and considered, but did not add three of these sites to its UGAs. This demonstrates that these overlays are being used for planning beyond the 20-year horizon. This shows that the County's regulations for map changes and adding land to the UGA are keeping these designations beyond the GMA's mandated 20-year planning horizon.

The process and the conditions that the County has imposed on changing the designation or adding land to the UGA work to keep these lands designated as agricultural lands during the County's GMA's mandated planning horizon. Also, Futurewise offers no evidence to support its contention that landowners will not invest in agriculture because of these designations, when it may take decades given the conditions the County imposes for map changes and additions to the UGAs, the size of the County's UGAs, land devoted to urban holding zones, market factors for industrial and commercial land, and capital facility limitations. The limitations in CCC 40.50.010 G and I deters the conversion of adjacent lands within the current 20-year planning horizon. The IUR and UR designations may act as an incentive to keep these lands designated as agricultural lands for as long as possible, to prevent their conversion to rural development, and to conserve less vulnerable agricultural lands. With its limited application and specific conditions governing the change to the overlay designation, the IUR and UR overlays have potential to assist in conserving agricultural lands during this mandated planning period and for providing for more efficient extension of urban services, higher urban densities, and industrial developments that use land more effectively in the next planning period.

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

Conclusion: For the reasons outlined above, we find that the County's use of UR and IR overlays are not clearly erroneous according to RCW 36.70A.320 and Petitioner has not sustained its burden of proof that the UR and IUR designations fail to comply with RCW 36.70A.020(1), RCW 36.70A.020(8), RCW 36.70A.040, RCW 36.70A.050, RCW 36.70A.060, and RCW 36.70A.130 and fails to encourage and conserve designated commercial significant agricultural resource lands.

VI. FINDINGS OF FACT

1. Clark County is located west of the crest of the Cascade Mountains and is required to plan pursuant to RCW 36.70A.040.
2. Petitioners Clark County Natural Resources Council (CCNRC)l and Futurewise are nonprofit organizations that participated in the adoption of Ordinance No. 2004-09-02 and Ordinance No. 2004-09-02A in writing and orally. These Petitioners addressed the issues raised in their Petitions for Review in its participation below.
3. Interveners have an interest in the decision in this case and have been granted Intervenor status by the Board.
4. Clark County adopted Ordinance No. 2004-09-02 and Ordinance No. 2004-09-02A, adopting a new Clark County's comprehensive plan, zoning ordinance, and zoning maps, on September 20, 2004.
5. Clark County published notice of the adoption of Ordinance No. 2004-09-02 and Ordinance No. 2004-09-02A on September 24, 2004.
6. Petitioner CCNRC filed its Petition for Review on November 19, 2004 and Petitioner Futurewise filed its Petition for Review on November 22, 2004.
7. To develop the assumptions that Clark County would use to size its UGAs, the County appointed a steering committee of elected officials from all Clark Counties cities and a technical advisory committee (PTAC) that included the planning staff of the local jurisdictions and the staff from special districts. Exhibit 637. These committees met regularly from 2000-2004 to examine data and make recommendations to the County Commissioners on various aspects of the comprehensive plan including assumptions on which to base the size of the urban growth areas (UGAs). Exhibits 8 – 32.
8. The minutes of the Steering Committee show that a wide range of opinion and analysis based on studies done by diverse groups was gathered and evaluated. Exhibits 8 – 32.
9. The PTAC reached a consensus recommendation on all the population assumptions for sizing the UGAs except one, the amount of land assumed to be devoted to infrastructure. Exhibit 637.
10. The Clark County plan does not use a market factor for residential land, but does use a 25 percent market factor for commercial, and 50 percent for industrial land.

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

11. The County' uses a projected future population of 556,000 for purposes of transportation planning and a projected future population of 534,000 for all other parts of its comprehensive plan. Exhibit 700 at 45.
12. The larger numbers utilized for transportation planning do not interfere with the ability of the physical aspects of the plan to coexist on available land; they simply provide a greater cushion for adequate transportation planning to support development. The larger population projections for transportation planning purposes actually further the plan's ability to provide for adequate public facilities, cause more phasing, and bring possible levels of service deficiencies into sharper focus during the County's annual review of its annual transportation plan update
13. RCW 36.70A.110(2) places the ultimate responsibility of sizing the urban growth areas with the County. This includes adopting the assumptions on which to determine the size of the UGA.
14. The urban growth boundary for the City of Vancouver is the same in both the city's and the county's comprehensive plan.
15. For public schools, the County chose to use what it calls "indirect concurrency" for schools. These services are those deemed necessary to support growth in varying degrees, but have not been identified by the GMA as critical facilities to be applied using direct concurrency standards as in the case of roads, sewers, and water facilities.
16. The Battle Ground School District uses a complex and multi-faceted method, to fund new school facilities, by combining state funding given to school districts based on local need, voter supported bond issues, and impact fees,
17. The Battle Ground School District capital facilities plan (CFP) for 2003 - 2009, is adopted by reference as part of the County's comprehensive plan. This CFP portrays how the District plans to fund permanent facilities through the combination of funds described above and discloses that the District will use impact fees to serve short-term and immediate needs. It details the cost of permanent facilities to serve growth and shows that $4.8 million will be spent on portable buildings.
18. After the County CP adoption, the voters in the Battle Ground School District approved a bond issue that secured funding for permanent facilities for the next six years.
19. Clark County's CP contains specific criteria that must be me before removing the Urban Holding designations in each of the County's municipal UGAs. These plan criteria include the provision that removal must be by area of urban holding overlays, not by individual site-specific properties. Certain properties require a master plan. Clark County's CP at 12-6 to 12-9.
20. Clark County Code 40.350.020 contains explicit concurrency standards.
21. Clark County Code Sections 40.370.10, 40.370.20, and 40.510.050 detail the requirements for connecting to sanitary sewer systems and domestic water supplies and also detail permitting requirements for urban services in urban growth areas. These requirements apply to keep urban holding areas at rural development densities until urban levels of services are provided.

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

22. The Legislature amended the GMA in 1998 to clarify cities' and counties' planning obligations for state transportation facilities, effectively eliminating the concurrency requirement for state highways and facilities of statewide significance.
23. The County has included the information required by RCW 36.70A.070 (6)(a) (ii) and (iii)(C) in the County's CP as follows: estimates of traffic volumes on state facilities at 5-5, existing deficiencies cause by traffic estimates at 5-6, future deficiencies at 5-7 and level of service standards at 5-8.
24. The County CP discloses how the lack of concurrency for state highways will impact Clark County by describing a) what the conditions of the state highway system will be during the next 20 years, b) the probable impacts on the local system by state transportation facilities and (c), likely local system impacts on state highways
25. In its 1995 Final Decision and Order in *Achen v. Clark County*, WWGMHB Case No. 95-2-0067c, the WWGMHB Board held that the Urban Reserve concept did not violate the GMA and, in fact, commended it as an "innovative technique."
26. In *Achen v. Clark County,* WWGMHB Case No. 95-2-0067c (2nd Compliance Order, December 17, 1997) the Board found the Urban Reserve Area concept compliant following the County's also designating of areas designated as Urban Reserve as commercially significant agricultural lands.
27. Areas adjacent to Vancouver's 179th Street, Vancouver's 162nd Street, the City of Washougal's UGA, and the City of Ridgefield UGA have been designated agricultural lands of long-term significance in Clark County's 2004 Plan. All but the area adjacent to the City of Washougal have also been given an Urban Industrial Reserve Area designation. The area adjacent to the City of Washougal has been given an Urban Reserve Designation.
28. The County has not changed the manner or the conditions for how it applies Urban Reserve or Industrial Urban Reserve designations to commercially significant agricultural lands in the County CP since these designations were found compliant by this Board. Nor have the Growth Management Act requirements changed since this concept was found compliant in 1997.
29. The County's development regulations to conserve agricultural lands and prevent interference from incompatible uses are unchallenged and therefore deemed compliant.
30. A property owner who wishes to change the designation of commercially significant agricultural land that also has an Urban Reserve or Industrial Urban Reserve overlay, must still meet the criteria for designation and zoning map changes outlined in CCC 40.50.010 G. Any owner of commercially significant agricultural land would be obliged to do the same.
31. The limitations in county code at CCC. 40.50.010 G and I. deters the conversion of adjacent lands designated agricultural lands within the current twenty year planning horizon.

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

VI. CONCLUSIONS OF LAW

A The Board has jurisdiction over the parties and subject matter of this consolidated petition.

B. The petitions were timely brought and the petitioners have standing to raise the issues in their petitions for review (now consolidated).

C. The petitions challenge the County's adoption of the Clark County 2004 Comprehensive Plan in Ordinance No. 2004-09-02 and Ordinance No. 2004-09-02A.

D. The land capacity analysis and population forecast analysis in the Clark County 2004 Comprehensive Plan comply with RCW 36.70A.020, 36.70A.070, 36.70A.110(2) and 36.70A.115.

E. The capital facilities plan for schools in the Clark County 2004 Comprehensive Plan complies with RCW 36.70A.070(3) and 36.70A.0202(12).

F. The transportation element of the Clark County 2004 Comprehensive Plan complies with RCW 36.70A.070(3), (4), and (6), and 36.70A.210(1) and (3).

G. The Urban Holding designations in the Clark County 2004 Comprehensive Plan comply with RCW 36.70A.020(12), 36.70A.070(3), 36.70A.070(6) and 36.70A.070.

H. The application of the Urban Reserve and Industrial Urban Reserve Designations in the Clark County 2004 Comprehensive Plan complies with RCW 36.70A.020(1), 36.70A.020(8), 36.70A.040, 36.70A.050, 36.70A.060 and 36.70A.130.

VII. ORDER

THIS Board having determined that the Clark County Comprehensive Plan 2004 is in compliance with the Growth Management Act (Ch. 36.70A. RCW) as to all the challenges raised in the consolidated petitions herein, this case is hereby DISMISSED.

Pursuant to RCW 36.70A.300 this is a final order of the Board.

Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the date of mailing of this Order to file a motion for reconsideration. The original and three copies of a motion for reconsideration, together with any argument in support thereof, should be filed with the Board by mailing, faxing, or otherwise delivering the original and three copies of the motion for reconsideration directly to the Board, with a copy to all other parties of record. Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-02-240, WAC 242-020-330. The filing of a motion for reconsideration is not a prerequisite for filing a petition for judicial review.

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person or by mail, but service on the Board means actual receipt of the document at the Board office within thirty days after service of the final order. A petition for judicial review may not be served on the Board by fax or by electronic mail.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19)

Entered this 22nd day of August 2005.

_____
Holly Gadbaw, Board Member

_____
Gayle Rothrock, Board Member

Hite, concurring in part and dissenting in part:

I join in the Board's decision on Issues 6, 22, and 23.

As to Issue 21, concurrency and public schools, I concur with the Board's finding that the County's capital facilities plan element as to schools meets the requirements of RCW 36.70A.070(3). I differ in how I view the applicability of Goal 12, RCW 36.70A.020(12). The County has adopted a measure it calls "indirect concurrency" for evaluating the facilities needs and probable funding for schools. CP 6-10. Indirect concurrency in the County's plan contrasts with "direct concurrency" or GMA concurrency, which requires that needed

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

public facilities "be in place or officially planned and scheduled to be put in place, concurrent with new development." CP 6-1. Indirect concurrency applies to "services necessary to support additional growth to varying degrees, but they have not been identified by the GMA as critical facilities to be applied using direct concurrency standards as is the case with roads, sewer and water facilities." CP 6-10. In the County's capital facilities element, the County has incorporated the plans of the Clark County School Districts in which each district's schools are inventoried, a forecast of future needs is conducted, the proposed locations and capacities for new or expanded facilities are described, and the financing plan is set out. Clark County Comprehensive CFP Review, 2004. Exhibit 791.

CCNRC focuses on the Battle Ground School District because, CCNRC alleges, the school district is over-capacity in 16 schools and has a current $90 million deficit for current needs. GMA Appeal Brief of CCNRC Issues 21, 23, 6, and 22 at 6. CCNRC argues that the capital facilities plan provisions regarding schools in the Battle Ground School District are inconsistent with the growth allowed under the land use plan and should have prompted the County to reassess the land use element. Ibid at 8.

The Consortium of Clark County School Districts addresses the Battle Ground funding problems as follows:

> If growth occurs as anticipated, the District may seek an additional bond in the coming years to serve these new students. Should a bond fail, and should student generation occur as predicted, the District may consider adding portables and/or changing service standards.

Ex. 274.

As recommended in the Procedural Criteria (WAC 242-02-315(2)(b)), the County has selected planning assumptions for schools against which the adequacy of funding may be tested. These are set by the school districts, based on federal and state requirements for school facilities, in light of projected demand. CP 6-12. These planning assumptions may be used to determine if funding is available as needed for residential development. The Battle Ground School District provides that if growth occurs as anticipated, the options are

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

additional bond measures, portable classrooms or changing service standards. Ex. 274. Taken together, these satisfy the requirements for ensuring that the capital facilities plan element, the land use element, and the financing plan are coordinated and consistent. RCW 36.70A.070(3)(e).

However, I would not hold that Goal 12 of the GMA (RCW 36.70A.020(12)) requires that the County establish "concurrency" between school financing and projected development, if the County determines that schools are necessary to support development. I believe that CCNRC has amply proven that the County has determined that schools are "necessary to support development." However, CCNRC then relies upon this reading of Goal 12 to argue that the only remedy for a shortfall in school funding in Battle Ground is to reallocate development to other parts of the county. GMA Appeal Brief of CCNRC Issues 21, 23, 6, and 22 at 8.

Goal 12 has been labeled the concurrency goal:

> Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

RCW 36.70A.020(12).

It is important to remember, however, that the goals of the GMA are to be used "exclusively for the purpose of guiding the development of comprehensive plans and development regulations." RCW 36.70A.020 (introduction). Guidance is not the same thing as mandating particular actions. Reading into Goal 12 a requirement to halt development until public services "necessary to support development" can be provided at current service levels strains the plain language of RCW 36.70A.020.

RCW 36.70A.070(3) establishes requirements for capital facilities planning, including "a requirement to reassess the land use element if probable funding falls short of meeting

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent." Instead of finding a direct concurrency requirement in Goal 12, I would hold that compliance with RCW 36.70A.070(3) is a major step towards achieving Goal 12 and that Goal 12 informs the reading of RCW 36.70A.070(3).

This is not to say that Goal 12 has no substantive import; I would find that Goal 12 has substantive import in that plans and development regulations may not be inconsistent with achieving the goal of adequate public facilities and services to support development when needed. The Eastern Board has held that substantive consideration of the goals of the GMA "remains whether the county's actions were substantively guided by the goals – whether their actions are consistent with the planning goals." *Save Our Butte Save Our Basin Society v. Chelan County,* EWGMHB Case No. 94-1-0001 (Final Decision and Order, July 1, 1994). Similarly, the Central Board has held that the substantive effect of the goals comes in consistency of local government actions with the goals. The Central Board has said that "to show substantive non compliance with a planning goal, a petitioner must identify that portion of the challenged enactment that is not consistent with, or thwarts, the planning goal, and explain why the identified portion does not comply with that goal." *McVittie v. Snohomish County*, CPSGMHB Case No. 99-3-0016c (Final Decision and Order, February 9, 2000). Although the Central Board did find Goal 12 requires the establishment of minimum standards as a baseline to assess need, it did so in the context of the Capital Facilities Plan requirements of RCW 36.70A.070(3). I believe that the requirement that local government actions be consistent with Goal 12, particularly in the context of the requirements for capital facilities plans, squares with the language of the GMA that goals are to be used "exclusively for the purpose of guiding the development of comprehensive plans and development regulations." On the other hand, reading Goal 12 to require specific actions to achieve concurrency for all public services needed to support development, I believe, exceeds the statutory limitation on the use of the goals.

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

As to Issue 40,[8] I respectfully dissent from the majority decision. The County has applied urban "reserve" designations to lands now designated as agricultural lands of long-term commercial significance. In applying the urban reserve designations, the County has not made a determination that these lands no longer qualify as agricultural resource lands. Instead, the County has determined that if there is a need for additional industrial land, then the agricultural lands will be available for that use.

Futurewise argues that the lands that have been subjected to the urban reserve overlay still meet the criteria for agricultural lands of long-term commercial significance. Futurewise's Prehearing Brief at 9. The County, Futurewise argues, designated the lands as agricultural resource lands and has not made a determination that this designation is no longer appropriate. Ibid.

The County first responds that Futurewise's challenge is foreclosed by the Board's prior decision in *Achen v. Clark County,* WWGMB Case No. 95-2-0067 (Second Compliance Order, December 17, 1997). Clark County Brief at 8. If the Board determines to reach the merits, the County argues that "unless and until a reserve area is brought into a UGA or designated a non-UGA major industrial development site under RCW 36.70A.365 or .367, it remains fully protected as agricultural land." Ibid at 9. Therefore, there is no violation of the GMA requirements to conserve and protect resource lands.

As to the County's first point, I would not find that the Board's decision in *Achen* is binding in this case because the Board has never heard Futurewise's challenge to the urban reserve designation. When the County adopted its new comprehensive plan, the plan was open for challenge for failure to comply with the requirements of the GMA. Although Futurewise did

[8] Futurewise abandoned Issue 41 after briefing and abandoned Issue 42 before briefing.

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

not bring its challenge the first time the County adopted its industrial reserve designations, this does not mean it is forever foreclosed from its day in court. As a result of the update requirements of RCW 36.70A.130, a new plan has been adopted and its provisions must meet the goals and requirements of the GMA. The petition filing requirements of the Act are triggered by the adoption and publication of a legislative enactment. RCW 36.70A.280(2). Futurewise properly participated in the adoption of the County's comprehensive plan in 2004 and now has standing to bring its challenge. RCW 36.70A.290(2).

Secondly, I would not find, as the County argues, that the urban reserve overlay designation does not change the conservation of agricultural lands provided by the underlying agricultural designation. The County's goal in the industrial reserve overlay is to prevent premature land parcelization and development of uses that are potentially incompatible with or preclude later industrial development. Clark County's Supplemental Submission at 7; CP at 1-27. The theme of the 2004 CP update process was to increase over time the jobs to population within the county and preserve potential industrial lands not generally found in rural-zoned areas adjacent to UGAs. Clark County Brief at 6. These are reasonable planning objectives but they do not reach the issue of converting specific agricultural resource lands to industrial uses within a UGA.

The state Supreme Court has found that the GMA provisions requiring designation, conservation and preservation of resource lands create a mandate to conserve agricultural lands:

> When read together, RCW 36.70A.020(8), .060(1), and .170 evidence a legislative mandate for the conservation of agricultural land.

King County v. CPSGMHB, 142 Wn.2d 543, 14 P.3d 133, 2000 Wash. LEXIS 834 (2000) at 562.

The "conservation mandate" does not mean that the designation of agricultural lands may not be changed. However, if a change in designation is to take place, it must be based

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

upon the criteria for agricultural designation. Under the GMA definitions of agricultural lands, there are criteria other than the presence of prime soils which are properly part of the designation decision:

> "Agricultural land" means land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable or animal products or of berries, grain, hay straw, turf, seed, Christmas trees not subject to the excise tax imposed by RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production.

RCW 36.70A.030(2)

> "Long-term commercial significance" includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land.

RCW 36.70A.030(10)

The Department of Community Trade and Economic Development (CTED) has adopted minimum guidelines for the designation of agricultural lands that further guide the designation process. WAC 365-190-050. The County's plan indicates that its designation of agricultural lands utilized CTED's "ten indicators." CP 3-7. These are the "combined effects of proximity to population areas and the possibility of more intense uses of the land as indicated by:

(a) The availability of public facilities;
(b) Tax status;
(c) The availability of public services;
(d) Relationship or proximity to urban growth areas;
(e) Predominant parcel size;
(f) Land use settlement patterns and their compatibility with agricultural practices;
(g) Intensity of nearby land uses;
(h) History of land development permits issued nearby;
(i) Land values under alternative uses, and;
(j) Proximity of markets.

WAC 365-190-050 (in pertinent part).

Consideration of these factors in making an agricultural designation gives a local jurisdiction flexibility in weighing reasons for applying or not applying the designation. In this case, the County did not review these factors and determine that the agricultural lands do not have, or

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

will not have, long-term commercial significance. Instead, the County states that placing the urban reserve designation on agricultural lands is not a decision to change the agricultural designation

The County is correct that the urban reserve overlay is not a decision to change the agricultural designation now but it is a decision to change the agricultural designation when certain conditions have been met. The County may bring the lands into a UGA as additional industrial lands "if 50 percent or more of the vacant buildable prime industrial land has been consumed." CCC 40.560.010.K. Comprehensive plan map changes require that a proposed amendment be consistent with the GMA and County planning adoptions, but there is no requirement that a change from resource land designation to industrial lands requires consideration of the applicability of the existing resource designation. CCC 40.560.010.G

In contrast to a designation of a major industrial development pursuant to RCW 36.70A.365 and an industrial land bank pursuant to RCW 36.70A.367, all that is really required under the County's plan for a change of designation from industrial reserve to UGA industrial land is a determination that over half of the designated industrial lands in a UGA have been consumed. CCC 40.560.010.K. Where both the GMA and the County CP apply rigorous requirements to the determination to convert lands outside of a UGA to industrial use, the County's conversion of designated agricultural resource lands outside a UGA to industrial use within a UGA is triggered only by a generalized "need" for such lands. See CCC 40.560.010.F.5 and 40.560.010.I for the County requirements for establishing a major industrial development or a major industrial land bank, including a required concomitant rezone application from the affected property owners.

Under the County's criteria for a UGA expansion, the fact of the industrial reserve overlay allows lands designated as resource lands to be added to a UGA, even though resource lands without that designation may not be so added:

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

> The amendment does not include lands that are designated as natural resource (agricultural, forest, mineral resource) unless such lands are also designated with an urban reserve or industrial urban reserve overlay.

CCC 40.560.010.L.9.

I would hold that these criteria change the designation of agricultural resource lands upon a County determination that it "needs" them for industrial purposes. Because the industrial reserve overlay has the effect of removing the protections from conversion otherwise provided to County resource lands, I would hold that the industrial reserve overlay violates RCW 36.70A.060 and 36.70A.170, together with the definitions of agricultural lands of long-term commercial significance. RCW 36.70A.030(2) and (10). I would also find that the legislature adopted RCW 36.70A.365 and 36.70A.367 as the means by which counties may convert resource and rural lands to industrial uses and that conformance with those provisions is a necessary part of the conversion of resource lands to industrial uses.

_____

Margery Hite
Board Member

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

Appendix A
Procedural History

On November 19, 2004, the Board received petitions for review from the following parties challenging Ordinance No. 2004-09-02 and Ordinance No. 2004-09-02A that adopted the update of Clark County's comprehensive plan, zoning ordinance, and zoning maps as required by RCW 36.70A.130 and assigned the following case numbers to these petitions:

- Clark County Natural Resources Council (CCNRC) – Case No. 04-2-0023.
- Building Association of Clark County, Clark County Association of Realtors, the Responsible Growth Coalition, and the Greater Vancouver Chamber of Commerce – Case Number 04-2-0024.[9]
- Michael DeFrees – Case No. 04-2-0025.

On November 22, 2004, the Board received petitions for review from the following parties challenging Clark County Ordinance No. 2004-09-02 listed above and assigned the following case numbers to these petitions:

- 1000 Friends of Washington[10] - Case No. 04-2-0028
- Walker Farms, Lori and Jim Walker, and David Callaham – Case No. 04-2-0029
- Whispering Pines Investment and Development Company and Joseph and Virginia Lear - Case No. 04-2-0030
- Debbie Mera, Joseph and Virginia Lear, and Whispering Pines Land and Development Company – Case No. 04-2-0031
- Peter J. and Donna Stone and Makim Enterprises – Case No. 04-2-0032
- John, Pam, and Christine Philbrook – Case No. 04-2-0033
- City of Battle Ground – Case No. 04-2-0034
- Rosemary Parker Living Trust – 04-2-0035

---

[9] These Petitioners also challenged the Clark County population forecasts made by the Washington Office of Financial Management (OFM) and named OFM as a Respondent.
[10] 1000 Friends of Washington later changed their name to Futurewise.

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

- James Parker – Case No. 04-2-0036
- Holt Homes, Inc.- Case No. 04-2-0037
- Michael S. and Terry Bowyer – Case No. 04-2-0038

Petitioners in Case Numbers 04-2-0029, 04-2-0030, 04-2-0031, 04-2-0034, 04-2-0036, 04-2-0037, and 04-2-0038 also challenged Ordinance N0 2004-09-02A.

Prehearing Conferences held on December 13, 14, and 20, 2004.

Because all of the petitions challenged the Ordinance No. 2004-09-02, the presiding officer consolidated these cases on December 16, 2004. This case became Case No. 04-2-0038c and was entitled the Building Association of Clark County, the Clark County Association of Realtors, the Responsible Growth Forum, and the Greater Vancouver Chamber of Commerce, et al v. Clark County and the State of Washington, Office of Financial Management.

On January 5, 2005, Board received a Motion To Intervene for Gramor, Oregon, Inc., John Somarakis, Robert Frasier, and Gary Rademacher requested to intervene in the consolidated case. On January 21, 2005, the Board issued an order allowing these parties to intervene.

On January 12, 2005, the Board received a Motion for an Extension of Time from Clark County. Having received signatures on the Motion for an Extension of Time from all the parties in this consolidated case, the Board issued Order Granting an Extension of the Deadline for Decision for Settlement Purposes on January 18, 2005. The new deadline for issuing the Final Decision and Order became August 22, 2005.

The Board received a motion to supplement the record from Holt Homes, Inc., Rosemary Parker Living Trust, Michael and Terry Bowyer, and Jim Parker on January 24, 2005.

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

Receiving no objections from any party, the Board allowed the parties to supplement the record with eleven items on February 11, 2005.

On January 28, 2005, the Board issued a prehearing order. This order allowed the addition of the following petitioners, as no party an objected to adding them: Donald Blair, Richard and Pamela Marini, Roger and Bonnie Gregg, Mark and Kathy Leathers, Richard and Barbara Salas, Sharon Y. Miller, Judith and Bruce Wood, and Jerry and Michele Winters.

On February 2, 2005, the Board received a motion from CCNRC for Clarification or to Intervene. Michael DeFrees and Intervenors opposed this motion. On February 28, 2005 the Board granted intervention to CCNRC on the issues in the consolidated order that CCNRC had not raised. The Board said:

> Because consolidation does not confer party status on a party as to petitions other than those filed by that party, CCNRC may not brief issues unless it is either a party or an intervenor in the petition for review in which the respective issues are raised. In considering whether CCNRC may brief issues raised in petitions for review it did not file, the Board will treat the CCNRC motion as a motion to intervene.

On February 4, 2005, the Board received a stipulated agreement and motion to dismiss the case, eventually signed by all parties to the consolidated case, except for CCNRC. On February 14, 2005, the Board received opposition from CCRNC to the stipulated motion to dismiss. On February 15, 2005, the Board issued Order Denying Motion to Dismiss. The Board said:

> The motion asks the Board to issue an order that is not within its authority. The Board does not have the authority to dismiss a petition for review, without a determination on the merits, if all the parties to the action have not stipulated to dismissal. The Board also lacks authority to remand a case to achieve compliance with the Growth Management Act (Ch. 36.70A RCW) unless the Board has made a finding of noncompliance pursuant to RCW 36.70A.302. In this case, the situation is muddied to some extent because a number of petitions have been consolidated into one case. However, the consolidation of the petitions for review did not alter the requirements with respect to each petition that was consolidated. Those

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

requirements go to both the burden on the petitioners to meet their burden of proving noncompliance and to the right of a petitioner to pursue its case.

On February 22, 2005, the Board issued an Order to Show Cause Re: Dismissal of Issue 15 (related to OFM) after Petitioner's Brief on the issue was not received by the deadline. On February 23, 2005, the Board received a Stipulation and Motion to Dismiss OFM. On March 2, 2005, the Board issued an Order Dismissing Issue 15 and OFM as a party.

Also, on February 22, 2005, the Board issued an Amended Prehearing Order.

On March 3, 2005, Board received The Building Industry Association of Clark Count et al.'s Motion to Intervene on Issues 6, 21, 22, 23. On March 15, 2003 the Board granted these parties' motion to intervene.

From March 7, 2005, through March 15, 2005, the Board received several motions from various parties to intervene on Issues 6, 21, 22, and 23. On March 15, 2005, the Board issued an orders allowing Holt Homes, Michael and Terry Bowyer, Rosemary Parker Living Trust, James Parker, and the City of Battle Ground to intervene on Issues 6, 21, 22, and 23.

On March 25, 2005, the Board received a Motion from the County and for an extension of time. An amended motion was filed on April 6, 2005. CCNRC submitted their opposition to an extension of time on April 14, 2005. On April 19, 2005, the Board issued an order denying the extension of time because all parties to the consolidated order did not support it.

On March 28, 2005, the Board received an opening brief from Petitioner Walker Farms.

On April 15, 2005, the Board received motions withdrawing petitions from Petitioners in Case Numbers 04-2-0024, 04-2-0025, 04-2-0030, 04-2-0031, 04-2-0033, 04-2-0034,

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

04-2-0035, 04-2-0036, 04-2-0037, 04-2-0038. On April 26, 2005, the Board issued an order dismissing the petitions in the cases listed above.

On April 26, 2005, the Futurewise and CCNRC submitted prehearing briefs.

On April 27, 2005, CCNRC submitted a motion to supplement the record. On May 2, 2005, the Board received a letter from the County confirming that all the items in CCNRC motion to supplement the record were already contained in the record, except for a newspaper article.

On May 5, 2005, the Board received a motion from Walker Farms, Petitioner in original Case No. 04-2-0029 to withdraw its petition from this consolidated case and issued an order dismissing Walker Farms from the case on May 16, 2005.

On May 17, 2005, the Board received a Motion from Renaissance Homes and Brief in Response to Futurewise's prehearing brief. Receiving no objection to Renaissance Homes' Intervention and because Renaissance Homes had submitted its brief in a timely way, the Board allowed Renaissance Homes to intervene on May 31, 2005.

Also, May 17, 2005, the Board received a motion from Intervenors to take official notice of the results of a recent successful Battle Ground School District school bond issue. On May 27, 2005 CCNRC filed a response opposing taking official notice of this election.

Clark County and Intervenor Building Association of Washington and Intervenor Gramor, Oregon, Inc., John Somarakis, Robert Frasier, and Gary Rademacher also filed its Response Brief on May 17, 2005.

On May 24, 2005, CCRNC filed its Reply Brief.

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

On June 1, 2005, the Board received an e-mail request that the hearing on merits in these cases be rescheduled due to a medical emergency of the County's representative. Following this the County filed a motion and a draft stipulated amended motion for an extension of the Final Decision and Order for an extension of time. Based on e-mail assurances from all the parties remaining in the case that they agreed to an extension, the Board rescheduled the hearings for July 1, 2005 for the issues raised by CCNRC and for July 11, 2005. After receiving signatures of all the remaining parties, on June 17, 2005, the Board issued order extending the Final Decision and Order deadline for 30 days to August 22, 2005 and rescheduling the hearings.

On June 1, 2005, the Board held a Hearing on the Merits in Vancouver, Washington on Issues 6, 21, 22, and 23, issues raised by CCNRC. Mr. John Karpinski represented CCNRC. Mr. Christopher Horne represented Clark County. Mr. David Ward represented Intervenor Gramor, Oregon, Inc., John Somarakis, Robert Frasier, and Gary Rademacher. Mr. Glen Amster represented the Building Association of Clark County, et al. All three Board members attended. At the Hearing on the Merits the Presiding Officer made the following rulings:

- The Board took official notice of the recent Battle Ground School Bond Election.
- The Motion to Strike portions of CCNRC's Reply Brief was denied, but Intervenor Gramor, Oregon, Inc., John Somarakis, Robert Frasier, and Gary Rademacher was allowed to submit a response to CCNRC's Reply Brief.
- CCNRC was allowed to supplement the record with a newspaper article from *The Columbian,* dated July 8, 2004, and was given Exhibit Number 801.
- The Board allowed the County to submit supplemental information in response to Board questions.

On July 11, 2005, the County submitted supplemental information.

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975

On July 11, 2005 the Board held a Hearing on the Merits on Issues 40, 41, 42, and 43, issues raised by Futurewise. Mr. John Zilavy represented Futurewise. Mr. Bronson Potter represented the County. Mr. James Howsley represented Renaissance Homes. All three Board members attended. At the hearing, the Board allowed both parties to submit argument and information in response to Board questions

On July 21, 2005, the County submitted a response.

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975